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Counsel to Certain Canadian Municipal Creditors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
PURDUE PHARMA L.P., et al.,	:	Case No. 19-23649 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s):

1. The City of Grande Prairie as Representative Plaintiff for a Class Consisting of All Canadian Municipalities, the Cities of Brantford, Grand Prairie, Lethbridge, and Wetaskiwin.

Part 2: Identify the subject of this appeal

2. This appeal is from the Decision of Judge Drain (the "Decision") confirming the Debtors' Eleventh Amended Joint Chapter 11 Plan of Reorganization (the "Plan").

3. The Decision was rendered on September 1, 2021. A copy of the transcript of the Decision is attached herewith.

Part 3: Identify the other parties to the appeal

4. The names of all other parties to the Decision, and the names, addresses and telephone numbers of their respective attorneys, are as follows:

<u>Party</u>	<u>Attorney</u>
1. Purdue Pharma L.P.	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Tel: (212) 450-4000

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|-----|--------------------------------------|--|
| 2. | Purdue Pharma Inc. | Davis Polk & Wardwell LLP
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| 4. | Purdue Pharma Manufacturing L.P. | Davis Polk & Wardwell LLP
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| 5. | Purdue Pharmaceuticals L.P. | Davis Polk & Wardwell LLP
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| 11. | Purdue Pharma of Puerto Rico | Davis Polk & Wardwell LLP
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13. Purdue Pharmaceutical Products L.P. Davis Polk & Wardwell LLP
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14. Purdue Neuroscience Company Davis Polk & Wardwell LLP
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Part 4: Optional election to have appeal heard by District Court

5. Appellant elects to have the appeal heard by the United States District Court rather than the Bankruptcy Appellate Panel.

Part 5: Sign below

Dated: September 15, 2021
Newark, New Jersey

Respectfully submitted,

Lite DePalma Greenberg & Afanador

By: /s/ Allen J. Underwood II
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CERTIFICATE OF SERVICE

I, Allen J. Underwood, hereby certify that, on September 15, 2021, I caused true and correct copies of the foregoing document to be served (i) by the Court's Case Management/Electronic Case File(CM/ECF) System to all parties who are deemed to have consented to electronic service; (ii) by email upon the parties who provided email addresses set forth in the Master Service List maintained by the Debtors in respect of these chapter 11 cases; and (iii) by email upon the Office of the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, paul.schwartzberg@usdoj.gov).

/s/ Allen J. Underwood II
Allen J. Underwood II, Esq.

TAB 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 Tele/Video Proceedings

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 September 1, 2021

17 10:06 AM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JUSTIN WALKER

1 HEARING re Bench Ruling at 10:00 AM at Videoconference
2 (ZoomGov) (RDD) .

3
4 Statement / Notice of Change of Listen-Only Dial in for
5 Hearing on Confirmation of Eleventh Amended Joint Chapter 11
6 Plan of Reorganization of Purdue Pharma L.P. and
7 its Affiliated Debtors

8
9 Notice of Agenda / [Updated] Third Amended Agenda for
10 Confirmation Hearing

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12 Notice of Agenda / Third Amended Agenda for Confirmation
13 Hearing

14

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Okay. Good morning. This is Judge
3 Drain. We're here in In re Purdue Pharma, LP, et al. This
4 morning's hearing was scheduled for me to give my bench
5 ruling on the Debtors' request for confirmation of their
6 amended Chapter 11 plan. I received a blacklined version of
7 certain important but still relatively minor changes to the
8 Debtors' tenth amended joint Chapter 11 plan yesterday which
9 is now, in light of those changes, the eleventh amended
10 joint Chapter 11 plan.

11 I also received a revised proposed confirmation
12 order including proposed findings of fact and conclusions of
13 law which is over 100 pages long. I have not gone through
14 it in detail. My ruling will be detailed, and if I'm
15 comfortable with the proposed findings and conclusions, I'll
16 keep them. I may add to them. And my ruling will be part
17 of the record as far as the proposed findings and
18 conclusions are concerned.

19 But I understand that the Debtors wanted to
20 address the Court briefly regarding the changes to the plan
21 and the resolution of at least one objection. And I'm happy
22 to hear that.

23 MR. HUEBNER: Thank you very much, Your Honor.
24 Can you see and hear me clearly?

25 THE COURT: Yes.

1 MR. HUEBNER: Okay. Your Honor, for the record,
2 Marshall Huebner on behalf of the Debtors and Debtors In
3 Possession. A couple of quick updates which I think are
4 hopefully positive.

5 Number one, you know, since the Court's direction
6 at several of the hearings including both Wednesday and
7 Friday, various documents have been amended in a way that we
8 hope now comports with the Court's vision. The primary
9 changes to the plan that we are not going to walk through
10 unless the Court has questions are to finalize what I would
11 call the material or maybe even radical narrowing of the
12 Sackler releases, which is really on three different axes:

13 Number one, which parties are covered and get the
14 benefit of the releases and those changes I believe are now
15 in;

16 Number two, what is the scope of the releases.
17 And, of course, the Court gave a clear direction that they
18 should be limited very substantially as to scope compared to
19 the original set of agreements reached and filed by the
20 parties;

21 And then, number three, I guess who is bound by
22 the releases. This is the sort of "any other person to
23 holders of claims and causes of action" to just "holders of
24 claims." And I believe that hopefully we got it right after
25 several tries and the Court's continuing clear interim

1 rulings or directions to narrow the releases.

2 The second item, Your Honor, just for the benefit
3 of everyone's knowledge is the operating injunction for
4 NewCo. That is one of the many documents along with many
5 other structures in the plan including a brand new board of
6 directors and other things selected by governmental entities
7 to ensure that NewCo does only the things that everybody
8 would want it to be doing and doesn't do any of the things
9 that people would not want it to be doing. And that's
10 obviously I think part of the sacred mission of many of the
11 parties who have worked on this case.

12 That operating injunction was negotiated by the
13 Department of Justice by the Ad Hoc Committee which of
14 course includes a huge number of AGs, by the NCSG which
15 includes all the rest of the AGs getting us up to 48, and
16 the MSG, as well. That has now in fully-agreed form, and
17 it's final and was filed as Exhibit C like Charlie to the
18 confirmation order. That's a critically important document,
19 frankly, as part of ensuring that on a go-forward basis, you
20 know, everybody can hopefully take comfort in the credible
21 involvement of governmental entities and, of course, the UCC
22 as well who I, of course, need to mention as the official
23 appointee of the Department of Justice to oversee and assist
24 all unsecured creditors in the case.

25 Next, Your Honor, also filed I believe yesterday

1 is the final Sackler settlement agreement which has been a
2 very long time coming. Just so the record is clear, that
3 document was negotiated by the Official Committee of
4 Unsecured Creditors appointed by the Department of Justice,
5 by the AHC, by the MDL PACA members who are part of the AD
6 Hoc Committee which includes obviously several dozen
7 attorneys general and, of course, lastly really by the
8 Special Committee of Board which, of course, as everybody
9 knows after an examination was likewise found to be
10 fulfilling its fiduciary responsibilities with complete and
11 total independence.

12 So that document is now done, as well. It
13 contains very important things because this is a deal in
14 which the Sacklers are paying over time and frankly
15 something that sounds lawyerly and technical, which are the
16 collateral and the credit support annexes frankly involve
17 some of the most brutal negotiations that actually took
18 months because all of the fiduciaries on our side of the V
19 who represent the Plaintiffs in the case and, you know,
20 frankly, the states and the cities and the victims and the
21 like, you know, need to ensure that the Sacklers are going
22 to pay.

23 And, obviously, credit and collateral and
24 covenants and promises and oversight rights and the like are
25 quite critical to that, and those have now been, we believe,

1 negotiated to a place that we can live with. As the Court
2 has heard me say many times, you know, this is not a perfect
3 deal. We would have liked more and earlier, but this was
4 the deal that everybody was ultimately willing to agree to
5 under very very complex circumstances.

6 Finally, Your Honor, it just goes without saying
7 that I believe we incorporated everything the Court said.
8 One of the things that the Court will see is paragraph 7A of
9 the proposed confirmation order now further clarifies that
10 no material or substantive changes can be made to the
11 settlement agreement, essentially, and that it's not -- this
12 is the deal. The deal is done, and there will not be, you
13 know, any further material certainly concessions to the
14 Defendants in this case subsequent to the order being
15 entered and the documents having gone final.

16 Number four, Your Honor, there was a filing we
17 found a little bit puzzling by the U.S. Trustee yesterday.
18 They called us yesterday and raised a question about
19 language in our proposed confirmation order that they
20 believe could be read ambiguously as somehow being -- I
21 think the theory was like a ruling by this Court that this
22 and other courts can't grant future stays. We didn't
23 remotely read it that way. It certainly was nobody's intent
24 and, frankly, it's completely standard language that's in
25 dozens of confirmation orders.

1 We said, absolutely, let's clarify it. We thought
2 they were sending language; they didn't. Instead, they just
3 filed a pleading on the docket expressing their concern
4 about the ambiguity. I guess that's fine. And we jumped
5 right on it and instantly drafted language that we think
6 makes it clear beyond peradventure that there's no possible
7 argument since of course this Court never would, never
8 could, and no one would ever ask it to, you know, try to
9 issue something about future stays.

10 The point is just we took out the Rule 3020(E)
11 waiver of the 14-day stay so this case does have the 14-day
12 stay under Rule 3020(E). And all the language says is that
13 other than that stay, no other stays are currently in place.
14 Obviously, if somebody moves for a stay and they get a stay,
15 we'll all deal with that at the time and, obviously, we'll
16 be ready to discuss that since many parties in this case
17 certainly have strong views. So that has been addressed.

18 They did make a point about 1127. I just want to
19 be clear. I think all of the many fiduciaries in this case
20 are extraordinarily comfortable beyond a shadow of a doubt,
21 frankly, that the changes to the plan have just made it
22 better and better for the estate as, for example, to give
23 the primary example, we have continued to narrow the scope
24 of the releases in draft after draft while getting the same
25 amount of consideration from the Defendants.

1 So there's no limitation on the number of times
2 you could amend the plan. The law is very clear which is
3 you can't adversely affect creditors and stakeholders at a
4 juncture like this. The U.S. Trustee is not suggesting we
5 have. It almost seems more like amusing to me, but I do
6 want to be very clear we believe that all of the changes in
7 this plan that have happened really since it was originally
8 filed in March and certainly collectively but even
9 individually have done nothing but improve it further and
10 further and further for the stakeholders for whom many of us
11 serve as fiduciaries.

12 Obviously, they also indicate that they stand on
13 their objection as to both legal fees and the legality of
14 third-party releases. We certainly understand that. No one
15 else refiled their objection to make clear that it's still
16 standing. We understand. We don't pretend that all
17 objections are resolved, but certainly things have been
18 narrowed and many items have been resolved.

19 Finally, Your Honor, the last I think good-news
20 announcement and I'll turn over the podium in a minute to
21 Mr. Gleit is that I believe that there is now agreed
22 language to effectuate the Court's in essence ruling on
23 Friday about what the Court was and was not willing to do
24 with respect to the DMPs based both on the pleadings and the
25 factual record of the case. And so, you know, while that's

1 not a settlement, it is simply language that we believe
2 effectuates the Court's ruling. You know, I'm hoping that
3 that issue is now behind us, as well.

4 And so, Your Honor, with all of those updates, I
5 think it's fair to say that I should stop talking except to
6 note that I think we're now down to at the end, you know, a
7 very small number of the core objections about which we
8 heard both extensive trial testimony and argument. And so I
9 have no further updates I can announce because that's not
10 where we are.

11 But, you know, the final, you know, ten or so sort
12 of meta-objections have been resolved. We still continue to
13 work with all parties and hope that we can come to a
14 resolution. But it's just not where we are this morning.

15 So, Your Honor, unless the Court has questions for
16 me, I think that that actually sort of updates the Court and
17 all parties on what's been filed, why it was filed, which
18 things are now in the "done" pile, obviously, but for Your
19 Honor's comments, it goes without saying. and I have
20 proposed to turn my mic off and as Mr. Gleit to quickly
21 summarize the documentation on the DMP issue that Your Honor
22 gave guidance on. And I think we have nothing further to
23 say from the Debtors.

24 THE COURT: Okay. Thank you.

25 MR. GLEIT: Good morning, Your Honor. Jeffrey

1 Gleit, post conflicts counsel for the Debtors.

2 THE COURT: Good morning.

3 MR. GLEIT: Good morning. Your Honor, we heard
4 you loud and clear last Friday. And over the weekend and
5 the beginning of this week, we worked with the DMPs and the
6 AHC to work on language which I'm just going to briefly now
7 put in the record a brief statement which says:

8 "The Debtors and the DMPs have agreed that the
9 language inserted into 10.10(B) of the eleventh plan
10 reflects the Court's statements made in connection with the
11 DMPs' reserved objection. In addition, the parties agree
12 that the Debtors would state on the record" -- which I'm
13 doing now -- "Section 8.8(B) of the plan does not apply to
14 the settling Co-Defendants."

15 And, lastly, a provision was added to the
16 confirmation order which is going to make clear that any MDT
17 insurance settlements going forward are going to be upon
18 notice and in accordance with Bankruptcy Rule 9019.

19 So unless Your Honor has any questions, I think
20 the issue is now resolved.

21 THE COURT: Okay. All right. Ms.

22 (Indiscernible), is that correct? Does that language in the
23 plan and the statement that Mr. Gleit just made resolve the
24 remaining objection by the MDP parties or sometimes referred
25 to as the Co-Defendants?

1 WOMAN: Yes, Your Honor; it does. Thank you.

2 THE COURT: Okay. And I just want to be clear.

3 As I understand it, it leaves open the issues that I said
4 should be left open, which includes potentially as a defense
5 whether the rights to coverage under a policy were released
6 under the agreement between the parties. But if in fact
7 those rights are direct and established, then as I read the
8 plan, it gives the -- that party that has that, those rights
9 access. They're not enjoined by the insurance injunction.

10 WOMAN: That's our understanding, Your Honor.
11 Thank you.

12 THE COURT: Okay. Very well. I appreciate the
13 parties' work on that.

14 All right. I think that concludes the first part
15 of this hearing which really just went to clarify as noted
16 the recent changes to the plan and updated me on the status
17 of the settlement agreement with the Sackler parties. So
18 I'll give you my bench ruling now on the Debtors' request
19 for confirmation of the eleventh amended joint Chapter 11
20 plan.

21 It is clear that the wrongful use including
22 marketing of opioid products has contributed to a massive
23 public health crisis in this country and elsewhere. The
24 role of these Debtors and their owners, and this is a
25 closely-held set of Debtors, to that crisis makes the

1 bankruptcy cases before me highly unusual and complex.

2 This is so primarily because of the nature of the
3 creditor body given the extraordinarily harmful effects of
4 the Debtors' primary product, OxyContin, and other opioids
5 on ordinary people as well as on the local governments,
6 Indian tribes, hospitals and other first responders, states
7 and territories, and the United States who must address
8 these effects on a daily basis. In a very real sense, every
9 person in the range of the Debtors' sell of opioid products
10 is a potential creditor.

11 Bankruptcy cases present a unique and perhaps the
12 only means to resolve the collective problem presented by an
13 insolvent debtor and a large body of creditors competing for
14 its insufficient assets, including especially when dealing
15 with mass claims premised on a harmful product that, as is
16 the case here, causes massive harms or mass harms.

17 Bankruptcy cases focus the solution away from
18 individual litigation to a fair collective result subject to
19 the unique ability under the bankruptcy laws to, under
20 generally well-defined and rare circumstances, bind holdouts
21 who could not otherwise be bound under applicable able.

22 Over the years, courts and the parties to
23 bankruptcy cases have refined and improved on these
24 solutions. They clearly have been brought to bear here in
25 these cases involving in all likelihood the largest creditor

1 body ever. And I'm not speaking solely of the roughly
2 614,000 claims that were filed, although I believe that is a
3 record, but also as I noted before the people who could
4 arguably be said to be represented by their local
5 governments and their state governments as well as by the
6 United States.

7 Here, too, the parties have worked in unique and
8 trailblazing ways to address the public health catastrophe
9 that underlies those claims. These cases are complex, too,
10 because the Debtors' assets include enormous claims against
11 their controlling shareholders and in some instances
12 directors and officers who are members of the Sackler family
13 whose aggregate net worth, through greater than the Debtors,
14 also may well be insufficient to satisfy such claims and
15 other very closely-related claims against them that are
16 asserted by third-parties who also are creditors of the
17 Debtors, that is have claims against the Debtors.

18 The questions then are how can such claims be
19 resolved to best effect for the claimants and is such
20 resolution authorized under the Bankruptcy Code and law.
21 The primary questions for me in this case focusing on the
22 Chapter 11 plan that is before the Court for confirmation is
23 can these issues be resolved by the Court by approval of the
24 plan and should they. It is clear to me after a lengthy
25 trial that there is now no other reasonably conceivable

1 means to achieve this result.

2 I believe it is also clear under well-established
3 precedent that with a sufficient factual record, Congress in
4 the Bankruptcy Code and the courts interpreting it provide
5 the authority for such a resolution. That leaves the
6 question should this resolution be implemented. This ruling
7 explains my findings and conclusions with respect to all of
8 those issues informed by the record of these cases, the
9 parties' votes on the plan, the parties' briefing, and the
10 record of a six-day trial involving 41 witnesses in a
11 courtroom full of exhibits and two full days of oral
12 argument.

13 I will note before I proceed that I am giving this
14 ruling as an oral bench ruling as opposed to writing a
15 written opinion because I believe it is of critical
16 importance that the parties to these cases learn the result
17 of my analysis as promptly as practicable.

18 As I often do with lengthy bench rulings, I will
19 go over the transcript of my ruling. And if I feel that I
20 have said something inartfully or left something out that I
21 should have said and, of course, in addition to correcting
22 any typos or missed citations or citations in improper form,
23 I will modify my bench ruling and file it as a modified
24 bench ruling, not obviously as a transcript.

25 But, again, as with any case of this size and

1 particularly given this case where the parties I think
2 universally have made it clear, and I fully understand them,
3 that it is important to devote the Debtors' resources as
4 soon as possible to paying victims' claims and otherwise
5 abating the opioid crisis, that there should not be any
6 further delay in my delivering this ruling.

7 The notice of the Debtors' request for
8 confirmation of the plan was set forth by Jeanne Finegan in
9 her declaration and testimony, primarily her third
10 supplemental declaration which served as her direct
11 testimony but also referred to prior declarations that she
12 had provided with respect to the noticing of claimants and
13 potential claimants in these cases.

14 It is clear from her testimony that the notice of,
15 A, these bases; B, the right to assert a claim against these
16 Debtors; C, the request for confirmation of the plan; and D,
17 the proposed broad release of third-parties' claims against
18 the released parties in the plan which is primarily of the
19 Sacklers and their related entities, was unprecedentedly
20 broad with only one caveat.

21 Ms. Finegan's testimony was undisputed that the
22 Debtors' noticing program as implemented under Ms. Finegan's
23 supervision reached roughly 98 percent of the population of
24 the United States and a only marginally smaller number or
25 percentage of the population in Canada and also was

1 extensive throughout the world where the Debtors' own
2 products might have caused harm.

3 The program was carefully tailored to reach known
4 creditors but also to reach the population at large
5 including through various types of media aimed at people who
6 may have been harmed by the Debtors' products. Ms.
7 Finegan's calculations reflect literally billions of hits on
8 the social media and internet notices as well as, of course,
9 reliable studies of the reach of the other means of notice.

10 The caveat that I would have is that the notice to
11 those in prison was in part effective, I believe, in
12 providing notices to prisons and to groups working with or
13 known to work with people who are in prison and suffering
14 from opioid use disorder or other adverse effects of
15 opioids. But it is certainly within my contemplation that
16 given prison regulations and at times lack of access to TV
17 and radio and other media, prisoners may not have gotten the
18 same high level, and I'm talking again about approximately
19 98 percent of the entire U.S. population, of notice of the
20 case, the bar date, the confirmation request, and the
21 releases in the plan.

22 On the other hand, the Debtors and the plan
23 including the personal injury trust procedures have made it
24 clear that they are flexible with regard to late claims
25 against the personal injury trust and the assertion of

1 evidence to the trust by prisoners in light of prisoners'
2 unique circumstances.

3 United States Trustee also suggested that
4 references to the plan in the notice would have sent a party
5 to a lengthy and complex set of release provisions. This is
6 true, and it clearly does take a lawyer to parse through
7 those provisions. And even then, as reflected by the record
8 of the parties' responses to my comments, those provisions
9 were subject to some potential for differing interpretation,
10 although I believe that is not the case now that they have
11 been narrowed.

12 However, the notice that was most widespread was a
13 very simple one that made it quite clear that the plan
14 contemplated a broad civil release of the Debtors'
15 shareholders, the Sacklers, and their related entities. In
16 addition, the extensive media coverage of this case also
17 made that point crystal clear. And it is that aspect of the
18 release rather than parsing through it that is the basis for
19 the objections that have been filed and, therefore, that
20 could have been filed, i.e., that it is too broad and not
21 authorized under applicable law, which I believe was
22 pervasively spread throughout the country and in Canada.

23 So I conclude that the Debtors' notice of the
24 confirmation hearing and the proposed releases in the plan
25 was sufficient and, again, unprecedentedly broad.

1 Next, I should note the vote on the plan by the
2 classes entitled to vote. It is important to address this
3 issue up-front because if a plan is not accepted by an
4 impaired class in its vote, the plan proponent must proceed
5 under the so-called cramdown provision of the Bankruptcy
6 Code, Section 1129(b). On the other hand, if all of the
7 impaired classes have voted in favor of confirmation of the
8 plan, the Court analyzes only Section 1129(a)'s requirements
9 for confirmation and the incorporated provisions of the
10 Bankruptcy Code related to it such as Section 1122 and 1123
11 of the Code.

12 Based on the ballot declaration and testimony of
13 Christina Pullo, this plan received I believe also an
14 unprecedented number of votes cast. And of the votes cast,
15 the plan was in fact accepted by every voting class, thus,
16 obviating the need to proceed with the cramdown provisions
17 of the Bankruptcy Code.

18 In addition, and significantly, each voting class
19 voted overwhelmingly in favor of confirmation of the plan.
20 On average, the vote was over 95 percent in favor of
21 confirmation of the plan. That, too, is a remarkable result
22 given the very large number of people who got notice, who
23 were entitled to vote, and who actually voted. And the
24 unprecedentedly large number applies to each of those
25 categories.

1 On the personal-injury claim side, the vote was
2 roughly 97 percent. In all cases, it was above 95 percent
3 except with regard to the hospital class which was just
4 under 90 percent, which however -- no member of which,
5 however, has actually objected or has an extant objection to
6 the plan.

7 I will address separately two objections that
8 allege that the votes should be looked at differently,
9 first, that the plan improperly classified certain claims
10 with other claims and that if they had been classified
11 differently in a separate class, the vote would not have
12 been as overwhelming, although it's acknowledged by those
13 objectors that it would still have been over 75 percent as
14 far as the super majority voting in the class, which is the
15 figure that Congress provided for in Section 524(g) of the
16 Bankruptcy Code when setting a higher bar for the release or
17 channeling of third-party claims in cases where the claims
18 are asbestos liability-related. Again, I will address those
19 classification points separately.

20 In addition, and frankly baffling to me, the
21 United States Trustee has argued that I shouldn't just look
22 at the votes cast but at the votes that were not cast in
23 determining whether the plan was overwhelmingly accepted.
24 That, of course, is not how elections are conducted. There
25 is no conceivable way to determine the preferences of those

1 who didn't vote other than that they didn't object and they
2 took no position in a "no" vote.

3 But where a vote is as extensive as this with
4 hundred -- well over 100,000 people voting, under any
5 measure, this plan has been overwhelmingly accepted. And,
6 of course, it is the vote that counts under Section 1126 of
7 the Bankruptcy Code and in every election, not a statement
8 by a bureaucrat or his or her sense of where the wind is
9 blowing. That's why we have elections.

10 A plan proponent has the burden of proof on all of
11 the applicable elements of Section 1129(a) that must be
12 satisfied for a plan to be confirmed. That burden of proof
13 is satisfied by a showing that the applicable provision has
14 been met by a preponderance of the evidence. In Re Ditech
15 Holding Corp, 606 B.R. 544,554 (Bankr. S.D.N.Y. 2019) and
16 the cases cited therein.

17 Many of the provisions of Section 1129(a) that are
18 applicable to this plan are uncontested. And based on my
19 review of the relevant witness declarations, including the
20 declaration of Jon Lowne, John Dubel, and Jesse DelConte, I
21 conclude that the uncontested -- that with respect to the
22 uncontested provisions of Section 1129(a), the Debtors have
23 carried their burden of proof.

24 The provisions of Section 1129(a) that have been
25 contested by the remaining objections are Section 1129(a) (1)

1 which states that the plan must comply with the applicable
2 provisions of this title, i.e., the Bankruptcy Code, which
3 incorporates for purposes of the objections that were filed
4 Sections 1122 and 1123(a)(4) of the Bankruptcy Code.

5 In addition, certain objectants have contested
6 that the Debtors have not satisfied their burden to show
7 under Section 1129(a)(3) that the plan has been proposed in
8 good faith and not by any means forbidden by law.

9 The United States Trustee has objected that the
10 payment of certain fees, that is legal fees and expenses,
11 under paragraph 5.8 of the plan, violates Section 1129(a)(4)
12 of the Code which states that it is a requirement for
13 confirmation that any payment made or to be made by the
14 proponent, by the debtor, or by a person issuing securities
15 or acquiring property under the plan for services or for
16 costs and expenses in or in connection with the case or in
17 connection with the plan and incident to the case has been
18 approved by or is subject to the approval of the Court as
19 reasonable.

20 Certain objectors have also contended that the
21 plan proponent has not satisfied the so-called "best
22 interests test" of Section 1129(a)(7) of the Bankruptcy Code
23 which requires a showing that with respect to each impaired
24 class of claims or interests, each holder of a claim or
25 interest of such class has accepted the plan or, that is for

1 those who have not accepted the plan, will receive or retain
2 under the plan on account of such claim or interest property
3 of a value as of the effective date of the plan that is not
4 less than the amount, excuse me, that such holder would so
5 receive or retain if the debtor were liquidated under
6 Chapter 7 of this title on such date.

7 The objectors who have raised this provision
8 contend that because they're third-party claims against the
9 released parties, the shareholder released parties, are
10 being channeled to the plan trust or otherwise precluded
11 because of the distribution that they would be receiving
12 under the plan, whereas they will not be in a Chapter 7
13 liquidation, the plan fails the so-called "best interests
14 test" comparing that liquidation recovery to the recovery
15 under the plan.

16 Finally, there has been a suggestion, although of
17 the faintest kind, that the plan does not satisfy Section
18 1129(a)(11) of the plan, the so-called "feasibility test"
19 Which states that confirmation of the plan is not likely to
20 be followed by the liquidation or the need for further
21 financial reorganization of the debtor or any successor to
22 the debtor under the plan unless such liquidation or
23 reorganization is proposed in the plan. I will address each
24 of those individual objections shortly.

25 Although I can find at this point that the plan

1 does satisfy the so-called "feasibility test" under Section
2 1129(a)(11), as set forth in the uncontested fact
3 declaration of Mr. DelConte showing projections and the
4 assignability of the Debtors' insurance, the only -- and I
5 would say this again -- nebulous objection on this point was
6 by the holders of certain claims asserted by certain
7 Canadian municipalities and First Nations which contended,
8 albeit I think only at oral argument, that the treatment of
9 those creditors under the plan would be sufficiently
10 disagreeable to the Canadian court presiding over the
11 ancillary CCAA proceeding in Canada when the Debtors request
12 recognition of the plan.

13 First, based on my understanding of the model law
14 on cross-border insolvencies, which forms the basis of
15 Chapter 15 of the Bankruptcy Code as well as the CCAA
16 provisions providing for recognition, I am reasonably
17 comfortable that the Canadian court will recognize the plan,
18 although of course that is the decision for the Canadian
19 court, and not view the plan as unduly discriminatory
20 against Canadian creditors of the Debtor or Debtors in light
21 of what they would reasonable recover from the Debtors if
22 this plan were not confirmed and the different nature of the
23 regulatory regime that governs the Canadian creditors than
24 their U.S. counterparts, i.e., Native American tribes and
25 municipalities in the U.S.

1 It is also my belief that the public policy
2 exception to recognition under the model law on cross-border
3 insolvencies would not be applied by the Canadian court
4 given the narrow nature of that public policy exception,
5 although again, of course, that decision is one to be made
6 by the Canadian court.

7 Further, it appears to me, again, based upon Mr.
8 DelConte's declaration that while recognition is important
9 and would bring clarity and finality to the claims of
10 Canadian creditors against these Debtors, the absence of
11 recognition is not critical to the survival of NewCo under
12 the plan and, therefore, that in any event the feasibility
13 test would be met.

14 I will note further that the plan makes it clear
15 that with respect to any Canadian creditor that has a claim
16 against Purdue Canada which is not a debtor here or a claim
17 against any of the shareholder-released parties that is
18 unrelated to a claim against the Debtors here, i.e., for
19 example, a claim against them because of their role in
20 Purdue Canada, those rights are expressly preserved under
21 the plan.

22 Most of the objections to confirmation of the plan
23 are based on the objectants' contention that the settlements
24 provided for in the plan either are not warranted under
25 applicable bankruptcy law or are beyond the Court's power,

1 even if warranted under bankruptcy law, to approve and
2 impose. Before addressing those issue, however, I will
3 address the other remaining objections to the plan's
4 confirmation.

5 The first set of objections that I will address
6 have been raised by certain insurers, Navigators Specialty
7 Insurance Company, American Guaranty and Liability Insurance
8 Company, and Steadfast Insurers and joined in by National
9 Union Insurance Company. I will note that another insurer
10 objection made by the Chubb Insurance USA Group has been
11 withdrawn.

12 The Debtors seek certain findings in the
13 confirmation order regarding the effectiveness of the
14 transfer of the Debtors' insurance or insurance rights to
15 the trust established under the plan to fund and make
16 distributions to creditors. They also seek findings
17 regarding the plan's settlement of opioid claims, namely
18 that the treatment of opioid claims under the plan or
19 insured claims under the plan or arguably insured claims
20 does not have the effect of impairing any applicable
21 insurance coverage as a bona fide fear of settlement on due
22 notice to the objecting insurers as well as the other
23 insurers who did not object.

24 The plan does not seek extensive findings as to
25 the Debtors' insurance. It, for example, does not seek a

1 declaration that any insurance coverage or insurance rights
2 actually apply. That is the subject of a separate
3 litigation that will take its own course. Rather, the
4 findings that the Debtors seek are integral simply to the
5 effectuation of the transfer of insurance and insurance
6 rights to the trust from the Debtors and to obviate a
7 defense that the plan itself in providing for a means to pay
8 opioid-related claims somehow derogates the insurers' rights
9 to review and consent to the payment of an insured claim.

10 The objectors contend that the plan and
11 confirmation order should be "insurance neutral, i.e.,
12 postponed for another day the need for even these findings."
13 There is no such concept or requirement that a plan be
14 insurance neutral. And where a plan provides for as an
15 element of the plan the transfer of the Debtors' insurance
16 or insurance rights to a trust, the issue has been joined in
17 the confirmation hearing. And the Court is properly
18 situated to decide it.

19 This is in contrast to, again, general coverage
20 issues, i.e., whether any particular claim against the
21 insurance is excluded because of a coverage exclusion, which
22 is not an element that the plan request a determination of
23 or hinges upon and where the plan is clear in the
24 reservation of rights by the insurance -- by the trustees of
25 the trust that will hold the insurance and insurance rights

1 on the one hand and the insurers on the other.

2 The insurance-neutral argument that the objecting
3 insurance companies make, therefore, is not grounded on an
4 underlying principle of bankruptcy law but rather only on a
5 due process concern. They contend that as originally filed,
6 the plan was arguably completely insurance neutral and did
7 not seek these types of determinations. However, I believe
8 that the record is clear that the objecting insurers and all
9 other insurers have had sufficient notice for months now
10 that the Debtors were going to seek these limited findings
11 in the confirmation order.

12 The insurers are extremely well represented,
13 highly sophisticated, as evidenced by the negotiations over
14 the plan provisions relating to them and the proposed
15 confirmation order. And they had a full opportunity to
16 challenge the findings that I've just outlined that are
17 being sought by the Debtors and their allies, the parties
18 that is, who would receive the benefits of the insurance
19 under the plan, namely the creditors.

20 That notice has really been made to them, at least
21 since May of 2021 and for the statutory and Bankruptcy Rules
22 notice period for the confirmation hearing, as well.

23 The plan also resolves the remaining due process
24 issue that the insurers had raised which is, as originally
25 drafted, it left open the possibility that additional

1 findings could be sought or documents could be filed that
2 the insurers would not have notice of and that might
3 nevertheless be bindings on them. The plan has been amended
4 to make it clear that that is not going to happen.

5 As far as the finding as to the plan's resolution
6 of arguably insured claims by providing for the distribution
7 of 100 percent of the value of the Debtors on account of the
8 claims asserted against them in the form of payments between
9 700 and \$750 million through personal injury trusts and
10 remaining amounts of at least 5 billion to abate the opioid
11 crisis in various forms, it is almost impossible to see how
12 -- in fact, I believe impossible to see how an insurer could
13 claim that its consent rights were somehow violated by
14 notice of the plan and the implementation of it.

15 As far as the filed claims are concerned, the
16 claims assert roughly \$40 trillion excluding a sole \$100-
17 trillion claim that was filed by an individual, and that is
18 only roughly 10 percent of the claims, the others asserting
19 unliquidated amounts or unasserted amounts as set forth in
20 the declaration of Jessica B. Horewitz, Ph.D., which is an
21 expert declaration. She calculated that the actual fixed
22 claim of the Department of Justice under the settlement
23 agreement entered into by the Debtors during the course of
24 this case provides for less than a one-percent recovery on
25 the asserted claim.

1 Under those circumstances, given the wide notice
2 and the absolute lack of any objection to the plan's
3 allocation of value either to opioid victims or to abate the
4 opioid crisis and the fact that insurers' consent rights
5 just like any other contract parties' consent rights are
6 circumscribed by the Bankruptcy Code's own separate notice
7 and hearing process. The Debtors' request for a finding as
8 to applicable consent provisions is justified and
9 appropriate.

10 In addition, ample case law establishes the
11 authority under Sections 1123(a)(5)(B) and (b)(2) and (6) to
12 transfer as part of a plan and in furtherance of a plan
13 insurance rights and insurance policies to a trust to pay
14 mass claims as exist in this case, the analysis set forth by
15 the Third Circuit in *In re Federal-Mogul Global Inc.*, 684
16 F.3d 355 (3d. Cir. 2012), I believe cannot be improved on in
17 this context.

18 I will note that although that was a case driven
19 by asbestos claims, the logic behind the Court's analysis
20 was based on Section 1123(a)(5) and 1141, not Section 524(g)
21 of the Code and, therefore, it would apply here. See also
22 *In re W.R. Grace and Company*, 475 BR 34, 139 *189 (D. Del.
23 2012), affirmed 729 F.3d 311 (3d Cir. 2013) and the cases
24 cited therein which show the vast, and I think perhaps
25 unanimous, authority for the finding and conclusion that the

1 Debtors seek here that notwithstanding any anti-assignment
2 provision and any applicable insurance under the plan, the
3 insurance policies or the insurance coverage rights, or the
4 rights to the proceeds could be assigned to the MDT, the
5 Master Distribution Trust.

6 I will note that both of these findings are also
7 warranted given that it appears that at least at this point
8 the insurers who have objected have either disclaimed
9 coverage or indicated that they were reserving their rights
10 to do so. See JP Morgan Security Inc. v. Vigilant Insurance
11 Company, 58 NYS 3d. 38 (1st Dep't 2017) and the cases cited
12 therein.

13 So I will overrule the remaining portions of the
14 insurers' objection to the extent they actually do remain.
15 And I will note that in light of the colloquy during oral
16 argument with the insurers' counsel and counsel handling
17 insurance issues in this case, Reed Smith, it appeared to me
18 that most if not all of the objections actually had been
19 resolved by the changes to the plan that I've already
20 described.

21 The next objection that I want to address is an
22 objection by the United States Trustee not to the plan
23 settlement and release provisions pertaining to the
24 shareholder release parties, i.e., the Sacklers and their
25 related entities, but rather a separate objection which is

1 to Section 5.8 of the plan.

2 The plan provides for compensation of a defined
3 term "professionals" which are estate-retained professionals
4 or professionals such as counsel for Official Committee of
5 Unsecured Creditors who are retained pursuant an order of
6 the Court and paid out of the estate's assets for their
7 post-petition, that is post-bankruptcy filing, work. Two
8 other groups of professionals are also covered by orders of
9 the Court previously entered in the case and will continue
10 to be so with respect to their fees through the effective
11 date or the confirmation date of the plan under those
12 orders, namely the AHC and the multi-state governmental
13 entities group.

14 Section 5.8 of the plan sets forth the treatment
15 of fee claims for other counsel, not counsel formally
16 retained by and whose retention was approved by an order of
17 the Court or was approved by order of the Court even if
18 retained separately. That section lays out the settlement
19 regarding the payment of these counsel, namely funds from
20 the so-called No Act and Tribal Abatement Fund Trusts for
21 political subdivisions and tribes' counsel.

22 In addition, it lays out payment of attorneys
23 involved in the pursuit by hospitals of their claims, the
24 so-called NAS monitoring claimant costs, that is the counsel
25 for NAS victims, payment for rate-payer costs and expenses,

1 payment for personal injury claimants' costs and expenses,
2 payment for the public schools' costs and expenses.

3 The U.S. Trustee contends that the only way that
4 the plan can provide for such payments is pursuant to
5 Section 503(b) (3) or (4) of the Bankruptcy Code which
6 provides that after notice and a hearing, there should be
7 allowed administrative expenses, that is expenses against
8 the estate for post-petition claims, including the actual
9 necessary expenses comprising reasonable compensation for
10 professional services rendered by an attorney or an
11 accountant of an entity whose expense is allowable under
12 (a), (b), (c), (d), or (e) of paragraph 3 based on the time,
13 the nature of the extent, and the value of such services and
14 the cost of comparable services other than the case under
15 this title and reimbursement of actual necessary expenses
16 incurred by such attorney or accountant.

17 That section takes you back to Section 503(b) (3)
18 which requires that a creditor show that it made a
19 "substantial contribution in a case under Chapter 11 of the
20 Bankruptcy Code." This contention by the U.S. Trustee is
21 wrong in two critical respects. First, the bulk of the fees
22 that it is objecting to are not for post-petition work but
23 rather for pre-petition work in bringing and pursuing claims
24 against Purdue and to some extent the Sacklers before the
25 commencement of the bankruptcy case including in the multi-

1 district litigation that was pending before the start of the
2 case.

3 Unsecured creditors' claims for collection of
4 costs including attorneys' fees are based in contract
5 ultimately as well as rights under applicable non-bankruptcy
6 law and enforceable in bankruptcy without the necessity to
7 comply with Section 503(b)(3) and (4) which applies only to
8 post-petition services or services leading up to a plan if
9 one seeks an administrative expense. See *In re United*
10 *Merchants and Manufacturers, Inc.*, 674 F.2d 134, 138 (2d
11 Cir. 1982).

12 The U.S. Trustee is wrong on this point also
13 because the remaining fees to be sought again are not being
14 sought as an administrative expense but rather as part of a
15 highly-negotiated compromise of those fees and their
16 clients' obligation to pay those fees reached during the
17 mediation in this case conducted by Messrs. Feinberg and
18 Phillips.

19 The settlements laid out in Section 5.8 that
20 resulted from that mediation are subject to court review
21 both under Bankruptcy Rule 9019 and I believe, although
22 there are arguments to the contrary, under Section
23 1129(a)(4) of the Bankruptcy Code, which I previously read,
24 and have been so recognized in this district. See *In re*
25 *Sterns Holding LLC*, 607 BR 781, 793 (Bankr. SDNY 2019) and

1 In re Sabine Oil & Gas Corp., 555 BR 180, 258 (Bankr. SDNY
2 2016).

3 The U.S. Trustee relies upon a case that is
4 eminently distinguishable, In re Lehman Brothers, Inc., 508
5 BR 283 (SDNY 2014). In that case, the district court noted
6 that Congress had specifically precluded recovery by
7 creditors' committee members of their post-bankruptcy fees
8 and expenses. Therefore, any settlement of those expenses
9 would be improper as controverted by that provision. See.
10 In contrast, In re AMR Corp. 497 BR 690, 695 (Bankr. SDNY
11 2013).

12 The mediator's report has made it clear and there
13 is unrefuted testimony in the record in addition to the
14 mediator's report on the docket by Gary A. Gotto, Peter
15 Weinberger, and Jayne Conroy as to, not only the
16 reasonableness of the contingency fees provided for in
17 Section 5.8, again, almost all of which were pre-petition or
18 for services rendered pre-petition but also the significant
19 compromise of those fees as set forth in Section 5.8
20 compromising down from a range of generally 20 to 40 percent
21 to the ranges set forth in Section 5.8.

22 As stated in the mediator's report, the
23 contingency fee resolutions as well as the common benefit
24 assessments reached in this mediation are consistent with
25 fee awards or arrangements of assessments agreed upon in

1 other similar mass-tort situations. See also the
2 declaration of AG Guard at paragraphs 57 through 60, 73, and
3 77 through 78; the Weinberger declaration at paragraphs 20
4 through 27 and 31 through 32; and the Conroy declaration at
5 11 through 15.

6 I do believe given Congress's concern that the
7 court be the ultimate say on the reasonableness of
8 attorneys' fees paid through a Chapter 11 plan, albeit that
9 here they're not being paid by the Debtor but rather they're
10 being paid by the clients and the trusts that the clients
11 have agreed to set up as part of the clients' recovery.
12 Congress did that, however, in Section 1129(a)(4), not
13 503(b)(3) and (4), which requires only that the fees be
14 founds to be reasonable.

15 That inquiry should not be turned into a mandate
16 for an expensive or unnecessary review. In re Journal
17 Register Company, 407 BR 520, 537-538 (Bankr. SDNY 2009)
18 quoting maybe the Southwestern Electric Power Company (In re
19 Cajun Electric Power Co-op Inc., 150 F.3d 503, 517 (5th Cir.
20 1998) based upon the uncontested representations. And I
21 note that the U.S. Trustee has made absolutely no effort
22 whatsoever to contest them but, nevertheless, somehow
23 contended that the fees were improper in the Guard-Conroy-
24 Weinberger declarations and the mediator's report.

25 I find that the contingency fees provided for in

1 the plan paragraph 5.08 and the mechanism for allocating
2 them among counsel are reasonable and, in fact, to the
3 benefit of the estate by a reduction of the attorneys'
4 claims. Sometimes being a watchdog that has no regulatory
5 power requires backing off when the facts show that a
6 provision is reasonable and for the benefit of the estate,
7 not its detriment. This is one of those instances.

8 There are two sets of fees that I cannot on this
9 record make a reasonableness finding on. I noted them
10 during oral argument on this issue. They are fees that are
11 based on not contingencies that the parties have analyzed,
12 contingency fee mechanisms, that is, that the parties have
13 analyzed and the mediators have analyzed and that I have
14 analyzed and that have not been controverted but rather on
15 hourly rates. I have not seen any time records as to the
16 amount of time spent or the rates, and so I believe I need
17 to make a reasonableness finding as to those counsel which
18 are the counsel to the PI Ad Hoc Committee and the School
19 Districts Committee.

20 The plan has been amended to reflect that opinion
21 that voiced during oral argument with one wrinkle. It
22 contemplated or it reflects that one portion of the school
23 districts' claim may actually be a contingency fee claim.
24 And it suggests that the Court will not review it if it is
25 determined by one of the mediators, Mr. Feinberg, to be

1 reasonable. I'm not prepared to accept that mechanism. I
2 will certainly take into account as I have with regard to
3 the other contingency fee compromises that are set forth in
4 paragraph 5.8 Mr. Feinberg's views, but I believe I
5 ultimately have to make the reasonableness determination on
6 notice to parties in interest including the U.S. Trustee.

7 I recognize that this is a compromise or that the
8 contingency fee amount is a compromise. But given that I
9 don't have evidence in this record to show that it was a
10 reasonable compromise, I need to under Section 1129(a)(4)
11 have the last say on it.

12 But I want to be clear that is a say that I will
13 exercise based on my review of the reasonableness of
14 contingency fee taking into account the evidence presented
15 before me which I anticipate will be some statement by Mr.
16 Feinberg and any other statement that would support that
17 level of contingency fee. So the U.S. Trustee's objection
18 on this point is overruled.

19 And just to be clear, because insinuations really
20 shouldn't go unanswered, there is absolutely no evidence for
21 any insinuation in the U.S. Trustee's filings that the fees
22 provided for in paragraph 5.8 are somehow improper. In
23 fact, to the contrary, they are settlements of claims that
24 could be substantially higher and were settled as part of a
25 mediation resolving the allocation of claims between public

1 and private creditors and the amount that creditors were
2 willing to accept coming from the Sacklers. The record is
3 crystal clear on that. Again, the settlements are to the
4 benefit of the creditors, not their detriment.

5 The next objections are by individuals, Creighton
6 Bloyd, Stacey Bridges, and Charles Fitch in their individual
7 capacities. They object contending that there was
8 insufficient notice of the bar date to those incarcerated in
9 prison, notwithstanding as I had noted above or earlier the
10 extensive notice as testified to by Ms. Finegan.

11 There's a fundamental problem with this objection.
12 All three of the objectors have actually filed a proof of
13 claim timely, i.e., before the bar date. They, therefore,
14 lack standing under Article III of the Constitution, and
15 this Court lacks the power to decide their objection because
16 as to them, and again, they're proceeding in their
17 individual capacity, there is no remedy that the Court can
18 grant. Again, they have filed timely proofs of claim in
19 this case.

20 As recently stated by the Supreme Court in
21 TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2202-2203
22 (2021), to have standing and for there to be a case in
23 controversy, the party raising a matter with the federal
24 court must have a personal stake in fact and if they don't,
25 there is no case or controversy which precludes

1 determination of the objection under Article III of the
2 Constitution.

3 See also Kane v. Johns Manville, Corp., 843 F.3d
4 636, 642-646 (2d.Cir 1988) which dealt with almost the same
5 issue.

6 Mr. Bloyd also filed a second individual objection
7 based on what he believes might be the consequences of the
8 Debtors' criminal plea in their 2021 settlement with the
9 Department of Justice. Mr. Bloyd's counsel acknowledged at
10 oral argument that this issue is properly raised not here
11 but at the Debtors' sentencing before the New Jersey
12 District Court in which it can be argued that persons such
13 as Mr. Bloyd might have an individual right to the proceeds
14 to be paid by the Debtors under the DOJ settlement.

15 Even if that wasn't conceded, I rule that that
16 issue is not a plan confirmation issue but rather an issue
17 as to the allocation of the DOJ payment after the Debtor
18 makes it. I don't believe it affects the feasibility of the
19 plan. Moreover, based on my review of the discretion that
20 the District Court would have under the applicable act that
21 Mr. Bloyd is going to rely on where there is such a large
22 number of potential victims for which the DOJ could be said
23 to be acting, individual rights in a restitution fund can be
24 foregone.

25 There's arguably a suggestion by Mr. Bloyd that

1 somehow the Debtors and the Department of Justice colluded
2 in agreeing to the settlement agreement and, therefore -- in
3 that they did not provide for individual rights of
4 restitution from the payments or the rights of the DOJ under
5 the settlement agreement. This is not supported by the
6 record.

7 The Debtors have established that, as far as the
8 plan's treatment of the Department of Justice, the plan has
9 been proposed in good faith under Section 1129(a)(3).
10 There's no evidence of any attempt to improperly cut off
11 rights that individual victims would have under the DOJ
12 settlement and, indeed, the personal injury class was
13 actively and well represented in the mediations in this case
14 which came up with the funding of the personal injury
15 trusts.

16 It's well established in the Second Circuit,
17 including in the Drexel case that I'll be citing in a
18 moment, that the fact that some creditors did not
19 participate in a mediation does not render the results of a
20 mediation improper or not in good faith. The extent of the
21 vote of the personal injury class, 97 percent in favor of
22 the plan, also argues for the good faith treatment of the
23 personal injury creditors here vis-à-vis the DOJ settlement.

24 And again, I've noted the flexibility in the
25 settlement and the applicable statute that would govern

1 restitution rights, which of course, the district court in
2 New Jersey will consider at the appropriate time.

3 So I will overrule Mr. Bloyd's second objection to
4 the plan.

5 I had mentioned earlier that certain Canadian
6 Municipalities and First Nations had filed an objection to
7 the plan. I've reviewed the proofs of claim that they have
8 filed in these cases against these Debtors. It is not clear
9 from those claims, which essentially attach complaints
10 against both non-debtor Purdue Canada and other non-debtors
11 and these Debtors, whether the claims really are against the
12 Debtors.

13 To the extent they are against Purdue Canada or
14 other foreign non-debtors, those recoveries are fully
15 preserved. They're not affected by the plan and claims
16 against third-parties, including the Sacklers related to
17 those types of claims, as opposed to claims against these
18 Debtors, are not enjoined.

19 The gist of the objection is that rather than be
20 treated as general unsecured creditors in Class 11, the
21 Canadian Municipalities and First Nation objectors must be
22 classified with the U.S. Public and Native American Tribes
23 in Classes 4 and 5 respectively and participate in the
24 abatement trusts created under the plan for those creditors.

25 It should be noted that these objectors have made

1 no contention that the value to be paid to them as a Class
2 11 creditor is unfairly different than the value to them if
3 they participated in the NOAT and Native American Tribes
4 Abatement Trusts. But in any event, it is conceded by these
5 objectors that if their vote were counted in Class 11, as
6 opposed to in Classes 4 and 5, Class 11 would still have
7 overwhelmingly accepted the plan.

8 Thus, the provision is Section 1129(b)'s cramdown
9 requirement that there be no unfair discrimination among
10 similarly situated creditors in different classes does not
11 apply. Instead, the objection is, if at all, properly
12 couched under different provisions of the Bankruptcy Code.

13 I will note that there was some suggestion during
14 oral argument and one sentence in the objection that stated
15 that the claims of the Canadian Municipalities and First
16 Nations should not be allowed for voting purposes at \$1.00,
17 as provided for in the Court's confirmation/disclosure
18 statement order. However, there's been no request to
19 estimate these claims for voting purposes under Section
20 502(c) of the Bankruptcy Code or Rule 3018.

21 And further, such treatment, i.e., temporary
22 allowance for what would otherwise be a disputed and
23 unliquidated claim arguably not even against these Debtors
24 for mass tort liability, is well recognized as being fair --
25 see the discussion in *In re Lloyd E. Mitchell, Inc.*, 373

1 B.R. 416, 428 (Bankr. D. Md. 2007) and the cases cited
2 therein -- given the vast number of claims asserted that are
3 unliquidated like these and subject to dispute. To subject
4 the process to fixing the amounts of such claims would
5 defeat the whole conduct of the bankruptcy case.

6 Given that Section 1129(b) doesn't apply to this
7 issue because of the class vote, the issue is whether the
8 plan's separate classification of these objecting creditors
9 in Class 11, as opposed to the class that they want to be
10 in, is proper.

11 Separate classification of similar claims is a
12 right that a plan proponent has under the Bankruptcy Code if
13 there's a reasonable basis to classify the claims
14 separately. See generally 7 Collier on Bankruptcy,
15 Paragraph 1122.03[1][c] 16th Edition 2021; In re
16 Lightsquared, Inc., 513 B.R. 56, 83 (Bankr. S.D.N.Y. 2014),
17 and In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723,
18 759 (Bankr. S.D.N.Y. 1992).

19 Section 1122 of the Bankruptcy Code, which again
20 is incorporated into Section 1129(a)(1) states nearly that
21 notwithstanding any otherwise applicable non-bankruptcy law,
22 the plan shall -- I'm sorry, I'm focusing on Section 1129 --
23 designate, subject to Section 1122 of this title, classes of
24 claims.

25 Section 1122 says, except as provided in

1 subsection (b) of this section, which is inapplicable here,
2 a plan may place a claim -- that is may place a claim -- in
3 a particular class only if such claim or interest is
4 substantially similar to other claims or interests in such
5 class. It doesn't require all substantially similar claims
6 to be placed in the same class, only that if you are putting
7 claims in a class, they need to be substantially similar.

8 Here, there is clearly a rational basis for
9 separately classifying these objectors' claims from the U.S.
10 public creditors and Native American Tribes, based upon the
11 different regulatory regimes that the objectors operate
12 under with regard to opioids and abatement, as well as the
13 fact that the allocation mediation, which I'll be discussing
14 at length later, which allocated the Debtors' assets and
15 third-party claim assets among private and public claimants
16 and then separately among the public claimants involved U.S.
17 public claimants and their own regulatory interests and
18 features.

19 The record reflects that there was no request by
20 any of the objecting creditors to participate in that
21 mediation. The record is also clear, and I can take
22 judicial notice of the fact as well, that those who did
23 request to participate in the mediation, if they had a
24 reasonable basis to do so, were generally invited into the
25 mediation, including for example, the NAACP.

1 The failure to participate in mediation is not
2 something that should detract from the settlement reached,
3 as long as the classification scheme is fair and rational.
4 See *In re Peabody Energy Corp.*, 933 F.3d 918, 927-8 (8th
5 Cir. 2019).

6 Such a distinction between U.S. and Canadian
7 claimants has been recognized by the Third Circuit and the
8 Sixth Circuit. See *Class 5 Nevada Claimants v. Dow Corning*
9 *Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 942 (6th Cir.
10 2012). See also, *In re W.R. Grace & Co.*, 729 F.3d 311, 329-
11 30 (2013), where Canadian property damage claims, including
12 a claim by the Queen on behalf of Canada, was found to be
13 properly separately classified because of the different
14 types of recovery such claims would have under applicable
15 law, a close analogy to the different regulatory schemes
16 that would apply here to the NOAT Trust.

17 Again, there was a suggestion that the separate
18 classification was also not in good faith, asserting
19 basically the same argument that because the Canadian
20 Municipalities and First Nations didn't have the same
21 treatment and classification as the U.S. governmental
22 entities and Native American Tribes, the plan was not in
23 good faith or proposed in good faith.

24 But given the plan's rational basis for separate
25 classification and the lack of any evidence to show that the

1 objecting creditors were improperly silenced or excluded
2 from negotiations, I find that the plan is proposed in good
3 faith as to them.

4 Besides raising the foregoing objections, the
5 Canadian creditors object to the plan's release of third-
6 party claims against the Sackler shareholder released
7 parties. To the extent they make the same arguments as
8 others do who raised this point, I will address them
9 collectively later.

10 In addition, however, the Canadian objectors have
11 contended that because no money from the shareholder
12 settlement is being specifically channeled to Class 11,
13 Class 11 creditors should not be enjoined under the plan
14 from pursuing whatever claims they have against the Sacklers
15 or the Sackler released parties based on their U.S. conduct.
16 Is this a valid basis for the plan objection?

17 Here, I conclude that it is as, at least by the
18 Canadian creditors, the uncontested best interest
19 liquidation analysis in the DelConte declaration shows Class
20 11 creditors would receive no recovery on their claims if,
21 as I believe is the case, upon their carveout from the
22 third-party release provisions, the Debtors would liquidate
23 the Sackler settlement, in other words, enables the Class 11
24 recovery to exist. It is necessary for and inextricably
25 tied to the plan and fair to the Canadian objectors,

1 therefore, to bind them to the release provisions in the
2 plan.

3 I will note in this regard that there's been no
4 indication in any claim by the Class 11 creditors that the
5 Sacklers would be liable to them based on their conduct
6 related to the U.S. Debtors. Indeed, as noted, there's
7 really little indication that there's any claim against the
8 U.S. Debtors in the first place.

9 It is clear to me from the liquidation analysis
10 and the record of this case, therefore, that the payment to
11 the class of unsecured creditors, that is Class 11 in which
12 these objectors reside, is fair taking into account not only
13 their rights against the Debtors, but also whatever rights
14 they may have against the Sacklers that would be released
15 under the plan, and, in fact, that they would not recover if
16 they were carved out from the release, so I will overrule
17 that objection.

18 Certain of the objecting states and the District
19 of Columbia have raised another objection to confirmation
20 than their objection to the third-party claims release and
21 injunction in the plan. They have asserted, first, that the
22 plan violates Section 1122 of the Bankruptcy Code by
23 classifying them in Class 4 with their political
24 subdivisions.

25 Given that classification, if one simply goes by a

1 creditor term by creditor vote in that class, the objecting
2 states and District of Columbia have a tiny percentage of
3 the no vote, compared to an enormous percentage of the yes
4 vote. They obviously do not like being portrayed that way,
5 and I do view them as representing their state as a whole,
6 that is the people in that state.

7 I do not accept, however, their blanket
8 characterization that because they are states, the other
9 public creditors, political subdivisions, municipalities and
10 the like that are in their class, can be silenced. I accept
11 that for most states that is not the case. More
12 importantly, states have political subdivisions that is
13 because of home rule laws and the like.

14 More importantly, there has been no attempt by the
15 objecting states and the District of Columbia to silence the
16 other members of their class by seeking to disallow their
17 vote or designate their vote under Section 1126 of the
18 Bankruptcy Code. And in any event, it is a position taken
19 only as to some political subdivisions' claims as being
20 precluded by the parens patriae rights of a state, as
21 opposed to all of them.

22 Importantly, the states acknowledge -- and this
23 was stated on the record by their counsel -- their claims
24 have the same rights to the Debtors' assets as other general
25 unsecured creditors, including the political subdivisions

1 that are in their class. That is, the states' claims are
2 not priority claims, they're not secured claims; they're
3 general unsecured claims.

4 The law is clear that under those circumstances,
5 the states' claims are, in fact, properly classified under
6 Section 1122(a), as I previously read, with the other claims
7 in their class. As noted by the Third Circuit in *In re W.R.*
8 *Grace & Co.*, 729 F.3d 311, 326 (3d Circ. 2013), to determine
9 whether claims are substantially similar for purposes of
10 Section 1122(a), "The proper focus is on the legal character
11 of the claim as it relates to the assets of the debtor." In
12 *re AOV Industries, Inc.*, 792 F.2d, 1140, 1150, (DC Cir.
13 1986). See also, *In re Tribune Company*, 476 B.R. 843, 855
14 (Bankr. D. Del 2021), (concluding that the phrase
15 substantially similar reflects, "The legal attributes of the
16 claims, not who holds them), and *In re Quigley*, 377 B.R.
17 110, 116 (Bank. S.D.N.Y. 2007), "Claims are similar if they
18 have substantially similar rights to the Debtors' assets."
19 See also, *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R.
20 723, 757 (Bankr. S.D.N.Y. 1992) and 7 *Collier on Bankruptcy*,
21 Paragraph 1122.03[3] 16th Edition 2021.

22 That is clearly the case here and, therefore, the
23 claims can in fact and should in fact properly be classed
24 together, which has resulted in the unanimous agreement by
25 all of the states, including these objecting states as to

1 the allocation within the class among them and the other
2 public creditors that was reached during the lengthy and
3 difficult mediation conducted by Messrs. Phillips and
4 Feinberg.

5 It also should be noted, although ultimately this
6 has little bearing on the classification issue, only bearing
7 on the plan release issue, that if the plan had separately
8 classified the states, although again that would have unduly
9 complicated the universally agreed public side allocation of
10 value as between the states on the one hand and all of the
11 other public entities on the other in Class 4, the accepting
12 states, the states accepting the plan, and the territories
13 would go from 95 percent as far as Class 4 is concerned to
14 80 percent or slightly below 80 percent, in each case, well
15 above the 75 percent supermajority threshold in the
16 analogous section of the Bankruptcy Code 524(g).

17 The objecting states and District of Columbia also
18 have referenced the alleged impropriety of classifying their
19 claims as well as all other opioid-related claims, none of
20 which have been liquidated to a dollar amount and most of
21 which never will be liquidated to a dollar amount, none of
22 which at least by the public entities will be because of the
23 plan and the agreement by all of the states in the plan to
24 use the money to abate opioids as opposed to paying them
25 cash. They nevertheless contend that their claims should

1 not have been allowed for voting purposes at \$1.00.

2 This objection should be denied for the same
3 reason that I denied the same argument made by the Canadian
4 Municipalities and First Nations: there's been no effort by
5 any of these objectors to seek to temporarily allow their
6 claims for voting purposes. There's an obvious reason for
7 that.

8 If that request had been made, every entity that
9 wanted to vote would have made the same request and we would
10 have been engaged in, I believe, literally years of
11 litigation over liquidating the claims, which these entities
12 themselves by their own choice as part of a mediation have
13 agreed needn't be done because the money will go to opioid
14 abatement instead of into their individual treasuries.

15 Under those circumstances, it's perfectly
16 appropriate to allow the claims for voting purposes for
17 \$1.00. Again, it's the In re Lloyd E. Mitchell, Inc., 373
18 B.R. at 428.

19 The same objecting states also argue that they are
20 being treated unequally with the United States, which is in
21 large measure carved out of the third-party release in the
22 plan. This, however, is not a proper objection under
23 Section 1124 -- excuse me -- 1123(a)(4), which says that a
24 plan shall provide the same treatment for each claim or
25 interest of a particular class unless the holder of a claim

1 or interest agrees to a less favorable treatment because
2 they're not in the same class; they're in different classes,
3 and as I noted earlier, a plan proponent can separately
4 classify similar claims in different classes if there's a
5 rational basis to do so.

6 There clearly is a rational basis to classify the
7 U.S. differently here. The U.S. has different types of
8 claims. It actually has secured claims, which are treated
9 as part of one of the aspects of the plan settlement, and
10 it's unsecured claims are different in particular with
11 respect to the Sacklers. Unlike the claimants in Class 4,
12 where the objecting states and the District of Columbia are
13 classified, the United States has settled its civil claims
14 with the Sacklers for a specific payment.

15 So clearly, the different rights of the United
16 States and different treatment of the United States, which
17 include as another part of the plan settlement, the waiver
18 of \$1.7 billion of its super-priority administrative expense
19 claim, which otherwise would be entitled to be paid ahead of
20 any unsecured claim and any administrative expense claim
21 under the abatement and NewCo provisions of the plan, which
22 is for the benefit of Class 4 and Class 5 and, frankly, all
23 of the creditors of the estate.

24 So those different rights and different treatment
25 clearly support separation classification, without a doubt,

1 nor is any unfair discrimination argument available under
2 Section 1129(b), the cramdown provision, because the class
3 has accepted the plan and, therefore, the cramdown
4 provisions don't apply.

5 The State of West Virginia has filed a limited
6 objection to the plan. It does not object to any aspect of
7 the plan other than the allocation in Class 4 and the NOAT
8 procedures of its share of the funds to be used in the NOAT
9 Trust to abate the opioid epidemic. It raises this
10 objection in two legal contexts. First, it contends that
11 the plan is not being proposed in good faith because what it
12 contends is the unfair allocations of the NOAT Trust.

13 Under Section 1129(a)(3) of the Bankruptcy Code,
14 the Court shall confirm a plan only if the plan proponent
15 shows that it has, "Has been proposed in good faith and not
16 by any means forbidden by law." The courts have fairly
17 general consensus as to the meaning of proposed in good
18 faith in this provision.

19 All courts recognize a procedural interpretation;
20 that is they look only to the proposal of the plan, not the
21 terms of the plan, to see if the proposal itself was in good
22 faith or, to the contrary, infected with improper conflicts
23 of interest or self-dealing or the like. See, for example,
24 Garvin v. Cook Investments NW, SPNWX, LLC, 922 1031, 1035
25 (9th Cir. 2019).

1 As the Circuit Court noted there, a contrary
2 interpretation that has a broader inquiry into general
3 principles of good faith not only renders the words has been
4 proposed meaningless, but makes other provisions of Section
5 1129(a), which are specific and shouldn't be diluted by a
6 good faith analysis, redundant. See 7 Collier on
7 Bankruptcy, Paragraph 1129.02[3][a] 16th Edition 2021.

8 In addition to that view, however, other courts
9 apply more of a totality of the circumstances analysis
10 beyond the manner in which a plan is proposed and find that
11 a plan is proposed in good faith if there is a reasonable
12 likelihood that a plan will achieve a result consistent with
13 the standards prescribed under the Code, that is the
14 Bankruptcy Code. In re Peabody Energy Corp., 923 F.3d 918,
15 927 (8th Cir. 2019).

16 Generally, the Second Circuit has clearly followed
17 the first line, just focusing on the proposal of the plan.
18 See In re Board of Directors of Telecom Argentina, S.A., 528
19 F.3d 162, 174 (2d Cir. 2008) and Kane v. Johns-Manville
20 Corp., 843 F.2d 636, 649 (2d Cir. 1998), and In re Koelbl
21 751 F.2d 137, 139 (2d Cir. 1984).

22 On the other hand, courts in this district have,
23 at times, followed a more expansive view, more of a totality
24 of the circumstances surrounding the establishment of the
25 plan and the like. Although even there, they focused

1 largely on the proposal of the plan and the process of plan
2 development. See In re Chemtura Corp., 439 B.R. 561, 608
3 (Bankr. S.D.N.Y. 2010), In re Quigley Co., Inc., 437 B.R.
4 102, 125 (Bankr. S.D.N.Y. 2010), In re Genco Shipping &
5 Trading Limited, 513 B.R. 233, 261 (Bankr. S.D.N.Y.), and In
6 re Breitburn Energy Partners LP, 582 B.R. 321, 352 (Bankr.
7 S.D.N.Y. 2018).

8 However, courts in this district also have
9 considered whether the plan, "... will achieve a result
10 consistent with the standards prescribed under the
11 Bankruptcy Code." See In re Ditech Holding Corp., 606 B.R.
12 544, 578 (Bankr. S.D.N.Y. 2019) and the cases cited therein.
13 And as recognized by Judge Garrity in that case, those
14 policies or objectives include preserving going concerns and
15 maximizing property available to satisfy creditors, giving
16 debtors a fresh start in life, discouraging debtor
17 misconduct, the expeditious liquidation of distribution of
18 the bankruptcy estate to its creditors and achieving
19 fundamental fairness and justice. Id.

20 Here, I have ample testimony by John Guard
21 primarily and the representative of the State of Florida,
22 that the allocation of the NOAT was the result of good faith
23 arms' length negotiations by the various states during the
24 mediation process. That testimony really is unassailable as
25 to good faith. It is also clear that without no

1 negotiations, which were difficult given the nature of the
2 states, not as weighty of course, but equally reflecting
3 concerns underlying the compromise behind the constitution;
4 you have small states, you have large states, you have
5 states that have been disproportionately affected by the
6 opioid crisis, et cetera.

7 Without that agreement, the goals of the
8 Bankruptcy Code would actually have been jeopardized that
9 agreement, which in fact, the State of Washington recognizes
10 being remarkable, and I too believe is remarkable to get 48
11 states to agree upon an allocation mechanism for abatement
12 procedures.

13 The failure to do so would have resulted in
14 extensive litigation and arguably a fallback on distributing
15 the value of the Debtors' estates, including their claims
16 against the Sacklers and channeled third-party contributions
17 or payments by the Sackler shareholder release parties, not
18 to serve abatement purpose, but rather after extensive
19 litigation cash payments, which I believe would be
20 substantially reduced by the extensive litigation, to
21 individual states for their general use in their treasuries
22 in large part.

23 So I find that the NOAT allocation was, in fact,
24 derived in good faith by arms' length and fair negotiations
25 among the parties.

1 That testimony by Mr. Guard is highlighted or the
2 cogency of that testimony is highlighted or was highlighted
3 by the cross-examination of West Virginia's expert, Dr.
4 Charles Cowan. He acknowledged his prior publications, that
5 is publications written prior to his being retained by the
6 State of West Virginia for the purpose of showing why West
7 Virginia should receive a larger allocation of the NOAT
8 under the plan. He recognized in those publications that
9 other methods of allocating money towards abatement could be
10 fair and reasonable as well, and that there was no specific
11 formula for allocating states' recoveries to them.

12 It was clear from Mr. Guard's testimony that the
13 proposal made by Mr. Cowan would not have been agreed to by
14 any state other than West Virginia. It also is clear that
15 that proposal or that methodology would have resulted in
16 peculiar allocations of the NOAT Trust money for abatement;
17 whereby, for example, states with substantially smaller
18 populations, like Kentucky, would get substantially more of
19 the funds than states with large populations like New York,
20 or Washington would get a larger recovery than Texas, or
21 West Virginia would get a larger recovery than Virginia,
22 albeit that they're neighboring states.

23 And albeit that although certain states like
24 Kentucky, like West Virginia are, in fact, ground zero in
25 the opioid crisis, it is a national problem that requires

1 the exercise of extensive resources by every state where
2 population is a legitimate measure, as well as the other
3 factors taken into account in the NOAT allocation.

4 That allocation does, in certain ways, respect the
5 rights of smaller states and take into account levels of
6 intensity of harm. However, it also recognizes that the
7 states report in some ways measures of intensity differently
8 and, therefore, those measures are not necessarily accurate.
9 For example, the evidence reflects that different states and
10 their subdivisions report deaths from opioids differently
11 than others, or record opioid disorders differently.

12 Given that, I conclude that the treatment of the
13 states in Class 4, and through it by means of the trust
14 procedures and allocations for the NOAT, are being treated
15 substantially the same pursuant to an overall regime that
16 has been negotiated at arms' length.

17 As discussed again by the Third Circuit in the
18 W.R. Grace & Co. case that I previously cited, "Although
19 neither the code nor the legislative history precisely
20 defines the standards of equal treatment, courts have
21 interpreted the 'same treatment requirement' to mean that
22 all claimants in a class must have 'the same opportunity for
23 recovery.'" See, for example, *In re Breitburn Energy*
24 *Partners, LP*, 582 B.R. 358, 321 (Bankr. S.D.N.Y. 2018) and
25 *In re Dana Corp.*, 412 B.R. 5362 (S.D.N.Y. 2008).

1 The W.R. Grace court then goes on to state or to
2 cite In re Central Medical Center, Inc., 122 B.R. 568, 575
3 (Bankr. E.D. Mo. 1990), which concludes that a plan that
4 subjects all members of the same class to the same process
5 for claim payment is sufficient to satisfy the requirements
6 of Section 1123(a)(4).

7 Finally, as the W.R. Grace court states, what
8 matters then is not that claimants recover the same amount
9 or that they have equal opportunity to recover on their
10 claims; that's at 729 F.3d 327.

11 The court goes on to state, courts are also in
12 agreement that Section 1123(a)(4), "... does not require
13 precise equality, only approximately equality," citing In re
14 Quigley Company, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007).
15 See also In re Multiut Corp., 449 B.R. 334 (Bankr. N.D.
16 Illinois, 2011).

17 It went on to find that -- that is the W.R. Grace
18 case -- found that the consequences of how and when the
19 class members would be paid didn't produce a substantive
20 difference in a claimant's opportunity to recover and were
21 the result of, among other things, a comprehensive mediation
22 and arms' length negotiations.

23 I conclude the same here with regard to West
24 Virginia's 1129(a)(4) arguments. I was not going to
25 conclude the same as to another aspect of its argument. One

1 of the adjustments made for the benefit of states with
2 smaller populations like West Virginia in the NOAT
3 procedures was a separate fund, so-called 1 percent fund,
4 which all the states, other than the small states that would
5 participate in the fund, were going to participate in, with
6 the exception of California.

7 I did not see sufficient evidence on the record to
8 justify California's being excepted from that contribution
9 obligation, if you will, to the 1 percent fund. However,
10 California has agreed, since the discussion on the record
11 during the confirmation hearing, to change its view and to
12 participate in the 1 percent fund. Therefore, the one
13 aspect of West Virginia's objection that I was going to
14 grant has effectively been granted by the agreement of
15 California that I've just described.

16 Mr. Guest made it clear that all of the states
17 recognized the huge impact that the opioid crisis has had on
18 states like West Virginia and had tried to take that into
19 account in negotiating the NOAT allocation. I too recognize
20 that impact, but I believe that given the arms' length
21 nature of the negotiation and the acceptable range of West
22 Virginia's treatment even within the writings acknowledged
23 by Professor Cowan, I conclude that its objection under
24 Section 1129(a)(4) should be denied.

25 The remaining objections to the plan, other than

1 the objections based upon the plan's third-party release and
2 injunction provisions and the plan settlement with the
3 Sacklers and their related entities, have been asserted by a
4 number of pro se parties, that is parties who were not
5 represented by counsel.

6 I will go through these, which I believe are
7 properly viewed in roughly four different categories.
8 First, Ms. Butler Frank, Ms. Villeneuve, Mr. Cobb, and Mr.
9 Wright have all stated in one form or another that the plan
10 should not give the Sackler family, "... immunity from
11 criminal charges." I completely agree, as does the plan.
12 The plan does not provide a release of criminal conduct.
13 That is crystal clear in the plan and always has been.

14 It is I think understandable that a person who is
15 not a lawyer and looks at this case from afar through one
16 form of the media or other may have reached a different
17 conclusion; in part, that is because either through
18 ignorance or choice, the plan has been described as
19 providing "immunity" to the Sacklers. Immunity suggests
20 clearly immunity from criminal charges; that's how one
21 generally thinks of the word immunity. It simply does not
22 do that. It couldn't do it and it doesn't.

23 It's important for those who should now know
24 better, whether they are reporters, law professors, or
25 members of congress, to be careful how they use their words

1 in this context. At a minimum, it reflects that they do not
2 understand this case. It also, if they really do know
3 better, is irresponsible and, frankly, also cruel to those
4 whom they mislead.

5 If anyone that is obtaining a civil release under
6 this plan has engaged in criminal activity, either before or
7 during this case, they are not relieved of the consequences
8 of that. If any prosecutor wants to pursue such a claim
9 against the release parties, they can.

10 Ms. Graham, Mr. Normile, Mr. Beois (ph), I hope
11 I'm pronouncing that right, Ms. Willis, Ms. Ecke, Mr. West,
12 and Ms. Farash have all in one form or another contended
13 that it is improper or unfair for the plan to provide only
14 the \$700 to \$750 million for individual personal injury
15 claimants, while the bulk of the recovery goes to, as one of
16 the objectors stated, wealthy states, hospitals, school
17 districts, ratepayers, et cetera.

18 I have said more than once during this case,
19 including to Ms. Ecke who testified during the confirmation
20 hearing, that one cannot put a price on a human life or an
21 injury such as opioid addiction, and yet, that's what courts
22 do with respect to personal injuries. They take into
23 account a number of factors, which are relevant legally,
24 including potential defenses or dilution of the claim and
25 causation. The amount that courts reach is rarely, in terms

1 of dollars, sufficient compensation. That is particularly
2 the case where the wrongdoer is insolvent.

3 I did not have any specific valuation of personal
4 injury claims in this case. What I do have is a lengthy and
5 difficult arms' length mediation, led by two of the best
6 mediators not only in the United States but in the world,
7 Messrs. Feinberg and Phillips. They are, I believe, in no
8 way beholden to any type of claimant here or sympathetic
9 unduly or disproportionately to any type of claimant here.

10 Mr. Feinberg, for example, has the incredibly
11 difficult job of working out by dealing with victims and
12 their families the proper allocation of the 9/11 fund. Both
13 of them have dealt with personal injury claims extensively,
14 and I believe the reason they do that is because they are as
15 sympathetic, if not more so, to individual victims as they
16 are to states, hospitals, and other entities.

17 The people representing the personal injury
18 claimants in that mediation were some of the most effective
19 personal injury lawyers, again, in the world, and by
20 effective, I include within that category aggressive. I
21 believe that, as set forth in the mediators' report, their
22 negotiations were at arms' length and in good faith.

23 I also recognize from the declaration by Jayne
24 Conroy, who is one of those personal injury lawyers and, in
25 fact, with her colleagues probably the main lawyer to, over

1 the last more than decade, pursue Purdue and the Sacklers on
2 behalf of personal injury claimants. Because of that dogged
3 pursuit, she obtained a settlement for her clients, roughly
4 1,100 personal injury claimants, albeit many years ago.

5 She described them in her declaration as those who
6 could tie their injury to a prescription, and I took away
7 from it probably the holders who had the most likely chance
8 in a litigation of obtaining a recovery, notwithstanding all
9 of the arguments that the defendants would throw back at
10 them.

11 After deducting a reasonable contingency fee from
12 that settlement, I believe on average the recovery -- and I
13 don't know how the recovery was divided, but just doing the
14 math from the aggregate amount minus a reasonable
15 contingency fee -- was approximately \$13,500 per person.

16 I have the declarations of Deborah Greenspan,
17 Peter Weinberger, Gary Gotto, and Ms. Conroy all laying out
18 what they believe was the hard-fought litigation process and
19 negotiation process for the settlement embodied in the plan
20 for personal injury claimants.

21 Ms. Greenspan also details the procedures under
22 the personal injury trust for efficiently, but consistent
23 with the burden to show a claim, to fix the amount of
24 personal injury claims and obtain a distribution. Her
25 declaration was uncontroverted and is eloquent in describing

1 a trust procedure mechanism that minimizes the difficulty
2 and cost of presenting a claim for personal injury, while
3 maintaining a sufficient degree of rigor over the burden of
4 proof to ensure as much of that money can go directly to
5 personal injury creditors instead of further to lawyers.

6 I also have the declaration of Michael Atkinson on
7 behalf of the Official Unsecured Creditors' Committee, which
8 attaches the committee's letter in support of the plan and
9 recognizes the committees role in balancing the interests of
10 personal injury creditors with the states that also assert
11 claims, and strongly supports confirmation of the plan as a
12 balance of those interests.

13 The plan vote, which was approximately 97 percent
14 of the personal injury class in favor of the plan, strongly
15 argues that the members of that class support the plan and
16 the fairness, albeit only in this setting where one
17 allocates money from a limited pot based not on a non-legal
18 view of the value of a human life or a person's health, but
19 based upon the likelihood of such claims recovering in a
20 contested setting and a, I believe, successful resolution of
21 that under the plan that provides for early monies out to
22 personal injury creditors ahead of the states and fair
23 procedures that make it relatively easy, though preserving
24 the burden of proof, to obtain a recovery.

25 The next set of objections were raised by Ms.

1 McGaha, who also was a witness at confirmation, and Ms.
2 VomSaal. Both of these people have very legitimate
3 concerns, as do all of the objectors, although as I said
4 before, I believe the first group of objectors have been
5 misled into thinking that the plan provides for release of
6 any criminal conduct.

7 Ms. McGaha and Ms. VomSaal question why NewCo
8 under the plan will continue to sell opioids in any form.
9 Ms. McGaha also recommends certain measures that could be
10 viewed as abatement measures, such as different disclosures
11 regarding long-term opioids or the banning of long-term
12 opioids, changes in packaging and the like.

13 I believe strongly that every constituency in this
14 case that has had a say on this issue has wanted to ensure
15 that the lawful production and sale of this dangerous
16 product be not only lawful, but conducted in a way that is
17 cautious, subject to layers of oversight, and informed by
18 the public interest at every step. That is the purpose of
19 the provisions of the plan dealing with NewCo. The NewCo
20 governance covenants, the NewCo monitor, the NewCo operating
21 agreement and the NewCo operating injunction. All of these
22 things, from the start of this case, were a primary focus of
23 the Official Unsecured Creditors Committee, which is
24 composed of victims only. There are no financial creditors
25 in this case. The Committee consists entirely of victims.

1 They have also been a focus, since the start of
2 this case, of all of the states and political subdivisions,
3 and I believe soon after the start of this case, of the
4 other institutional creditors like hospitals.

5 The Debtors have not, since before the start of
6 this case, had the Sacklers play any role whatsoever in
7 their management. And so the Debtors, too, have been
8 focused and volunteered, at the start of this case, an
9 injunction pertaining to their sale legally of these
10 products.

11 Those measures are described in Mr. Lowne's
12 declaration as well as the fact declaration of Mr. DelConte.
13 They were also discussed in the Michael Atkinson declaration
14 and the attached letter from the Creditors Committee, and
15 they are reflected again in the provisions of the plan that
16 I've just described.

17 The Bankruptcy Code does not require this but, in
18 keeping with the broad determination of 1129(a)(3) good
19 faith requirement, the parties in interest in this case have
20 required it, and I have encouraged them to do so. So that
21 at this point, I believe that the measures that I have just
22 described will set a standard not only for this company but
23 for other companies that manufacture and distribution these
24 products which are legal yet dangerous.

25 With these well-thought out provisions, it is hard

1 to imagine how any other company that engaged in this
2 business or in the distribution of these products wouldn't
3 also believe that it was not only the right thing to do but
4 also in their interest to imitate them. They're not being
5 imposed by a government; they're being imposed by this plan
6 with the input of state governments and the federal
7 government and, again, not only should serve as a model but
8 a warning to similar companies to take extra care than is
9 required by the FDA or Congress or state law or be held up
10 against this model in the future and be found lacking if
11 they did not at least take the level of care set forth in
12 this model of governance.

13 The abatement programs themselves are the subject
14 of substantial, again, un rebutted testimony, including by
15 Gautam Gowrisankaran, Dr. Rahul Gupta, as well as, as far as
16 the distribution procedures and abatement activities,
17 William Legier and Gayle Galan and, of course, the abatement
18 initiatives have the heavy input of the states and non-state
19 governmental entities. To have reached agreement on these
20 abatement metrics and mechanisms, again, is an incredible
21 achievement given the strong views that various parties have
22 as to what is proper as far as abatement is concerned.

23 Mr. Gowrisankaran's testimony, again, is unrefuted
24 and I believe cogent that there is a clear multiplier effect
25 of dedicating the bulk of the Debtor's value, including

1 their recovery from the Sackler, to abatement programs as
2 opposed to individual payments to be used perhaps for
3 abatement but not necessarily so.

4 The foregoing testimony also shows, as do the
5 abatement metrics, that the plan sets forth abatement
6 metrics and procedures that take into account developments
7 over time and learning over time as to what works and what
8 doesn't. Indeed, they encourage that learning because one
9 feature of the plan is the requirement for periodic reports
10 as to the use of the funds for abatement, which can then be
11 checked to see what works and what doesn't, and what can be
12 reallocated to what works.

13 The abatement procedures and metrics also include
14 a consultative process that takes into account the views of
15 communities and those within the community in a reasonable
16 and fair way.

17 The objections that I just described really don't
18 lay out, and I didn't expect them to lay out because, again,
19 they're pro se objectors, a legal basis for the objection.
20 I believe, though, that the proper prism within which to
21 analyze the objection legally is, again, the good faith test
22 under 1129(a)(3).

23 Given all that I've just described, it is very
24 clear to me that the use of the bulk of the Debtors' value
25 for abatement purposes is clearly in good faith and, in

1 fact, highly beneficial to those who have individual claims
2 against the Debtors as well as the communities and states
3 that also have claims.

4 It is also clear to me that those procedures, both
5 for abatement and for the governance of NewCo, are
6 facilitating not only the purposes of the Bankruptcy Code,
7 but the broader good. To suggest otherwise, to suggest that
8 somehow this was an ill-cooked and cooked in secret stew,
9 which I don't believe the two objectors are contending but
10 it has been suggested publicly by those who I don't think
11 have been following this case, or if they have, should know
12 better, is simply incorrect and dramatically so.

13 What this plan does within the constraints of
14 federal law, including the regulations and guidance from the
15 FDA is go beyond that law where that can be done to ensure,
16 A, the safety or the safe use of the Debtors' products,
17 including the development of products that would assist
18 those who are trying to recover from opioid use disorder and
19 provide cheap and accessible prevention mechanisms for
20 overdoses, and to provide for well-thought through,
21 consensually agreed upon by a wide spectrum of parties and
22 appropriately flexible abatement measures. Frankly, it
23 would be worse than embarrassing, it would again be
24 irresponsible and cruel to suggest otherwise.

25 The last objection by certain of the pro se

1 objectors that I've already named have contended that the
2 monetary civil settlement under the plan with the Sackler
3 shareholder parties and their related entities is unfair and
4 should not be approved. Of course, in this plan there is a
5 civil settlement with the shareholder parties and their
6 related entities. That is a true statement. That
7 settlement would resolve the Debtors' claims against those
8 parties, i.e., a Debtor settlement of Debtor claims, and
9 would resolve certain related third-party claims based
10 largely on the same conduct behind the Debtor claims or
11 certain of the Debtor claims.

12 It is extremely important and my main task,
13 notwithstanding that we're now at 1 p.m., to consider
14 whether that settlement is proper under the Bankruptcy Code,
15 both of the Debtors' claims and the related settlement and
16 third-party release and injunction of claims against the
17 settling parties.

18 One point should be addressed first with regard to
19 this inquiry, and I'm addressing it first in part because it
20 has been raised by the pro se objectors and I believe raised
21 because of what they have read or heard in the media and
22 perhaps from others.

23 Some of them assert that this Chapter 11 plan and
24 the settlement in it is the Sacklers' plan, or perhaps
25 artfully, some may mislead them by suggesting that, as it is

1 proposed by the Debtors and the Debtors are the controlling
2 shareholders -- at least they have the shares that would
3 enable them to control the Debtors if that was not foregone
4 by the Sacklers -- the Debtors' plan is, in a sense, the
5 Sacklers' plan, i.e., a plan for the Sacklers' benefit.

6 While I will separately examine whether the
7 settlement with the Sacklers is fair, one thing should be
8 absolutely clear and is clear, and anyone who says to the
9 contrary is, again, simply misleading the public, this is
10 not the Sacklers' plan. The Debtors are not the Sacklers'
11 company anymore. The Sacklers own the Debtors, but the
12 Debtors are not run by the Sacklers in any way and have not
13 been since before the start of this case. There is,
14 literally, no evidence to the contrary -- none. Although it
15 was not necessary, because the record was clear, the
16 examiner appointed in this case confirmed that.

17 More importantly, and as recognized by the
18 examiner and as recognized by anyone who paid any attention
19 to this case from its start, this case was driven as much
20 by, if not more than, the Official Unsecured Creditors
21 Committee and the other creditors in the case who formed
22 well-represented ad hoc committees led primarily by the 48
23 states that have claims against the Debtors, two states
24 having previously settled those claims before the start of
25 the bankruptcy case; led also by groups that had within them

1 very strong representatives of public non-state governmental
2 entities and Native American tribes.

3 These creditors are, in essence, the only
4 creditors of this Debtor. And from the start of this case,
5 all of this Debtor's assets were dedicated to them. They
6 wanted more than anything else to obtain as much value, not
7 only from the Debtors and the process of agreeing on a
8 Chapter 11 plan, but also from the Sacklers, who were viewed
9 by all as the other side, the opposition, the potential
10 defendants, the payors. And it is crystal clear that the
11 Unsecured Creditors Committee, the 48 states and territories
12 and the governmental entities were completely, utterly
13 independent and focused on that goal. They were facilitated
14 in achieving that goal by the two incredibly experienced and
15 effective mediators that I've already described.

16 And further, even after a largely successful
17 mediation of the claims against the Sacklers, both direct by
18 the Debtors and third-party claims by others, which resulted
19 from the mediators' own proposal as to what would be a fair
20 settlement, which was accepted by all except the so-called
21 nonconsenting state group of 24 states and the District of
22 Columbia.

23 I directed another mediation with another one of
24 the best mediators, not only in the U.S. but the world, my
25 colleague Judge Chapman. Based on her mediation report, she

1 had over 140 contacts discussions -- and knowing Judge
2 Chapman, I believe they were in depth, serious and well-
3 informed -- before the mediation date set to see whether the
4 nonconsenting states could reach agreement with the
5 Sacklers.

6 That day turned into a 27-hour day. Judge
7 Chapman, like Mr. Feinberg and former Judge Phillips, is a
8 successful mediator because she does not browbeat people.
9 She could not browbeat these states. That is crystal clear.

10 She's a successful mediator because she points out
11 the risks and rewards of not reaching a settlement and
12 reaching a settlement, recognizing that the process is
13 always consensual and not coercive. 15 of the states who
14 had previously fought the Sackler settlement and the plan
15 tooth and nail agreed to a modified settlement as a result
16 of that mediation.

17 I'm saying this not to support or show my support
18 for the underlying settlement but to reflect again or to
19 illustrate again the arm's length negotiation here and the
20 fact that this is not a Sackler plan but a plan agreed to by
21 80 percent of the states and well over 95 percent of the
22 non-state governments, and actively supported by the
23 Unsecured Creditors Committee, notwithstanding the
24 incredible harm that the Debtors' products have inflicted on
25 them.

1 Bitterness over the outcome of this case is
2 completely understandable. Where there has been such pain
3 inflected, one cannot help but be bitter. But one also has
4 to look at the process and the issues for their -- in light
5 of the alternatives and with a clear analysis of the risks
6 and rewards of continued litigation versus the settlement
7 set forth in the plan. And it's that process to which I'll
8 turn next.

9 As I noted, the Chapter 11 plan puts together two
10 settlements related to the Sacklers. It provides for the
11 settlement of the estate's claims -- and when I say the
12 estate's claims, that means the Debtors' claims against the
13 Sacklers for the benefit of their creditors -- and the
14 estates have substantial claims against the Sacklers.
15 Indeed, one can argue that those claims are the main claims
16 against the Sacklers.

17 In addition, the plan provides for a settlement of
18 certain third-party claims, claims by others or that could
19 be asserted by others, against the Sacklers and their
20 related parties, i.e., the shareholder released parties
21 under the plan.

22 I will focus first on the settlement of the
23 estate's claims, but I will note before focusing on those
24 claims and the settlement proposed of them that the plan is
25 not just a plan that settles the estate's claims against the

1 Sacklers and third-parties' claims that are related to those
2 claims against the Sacklers. In fact, the plan contains
3 several interrelated settlements with those settlements and
4 would not be achievable if any of those settlements fell
5 away.

6 They include a settlement of the complex
7 allocation between, on the one hand, individual personal
8 injury claims and claims by governmental entities, a subject
9 of months of mediation that I've already discussed. They
10 also include a settlement of the allocation of value among
11 the public creditors, the states, and nongovernmental
12 entities and Native American tribes.

13 Remarkably, all of those parties agreed to use the
14 value they would receive for abatement purposes, the
15 benefits of which I've already described. Other than the
16 personal injury claimants and the NAS claimants, the other
17 private claimants have also agreed, remarkably, to use the
18 value they will receive for abatement purposes, not to go
19 into their private coffers for whatever use they want to
20 have, such as, for example, buying a new x-ray machine.

21 In addition, during the case, the Debtors settled
22 both civil and criminal claims of the federal government and
23 the plan encompasses those settlements. Importantly,
24 including the agreement by the federal government to release
25 \$1.7 of its \$2 billion super-priority claim for the benefit

1 of the other public creditors and abatements if, as is the
2 case under this plan, the plan meets the requirements of the
3 DOJ settlement as far as setting up an abatement structure
4 and the corporate governance and other public purposes that
5 I described for NewCo.

6 All of those things hinge on at least the amount
7 of money coming to the Debtors from the Debtors and the
8 third-party settlements of the Sackler claims. Without the
9 \$4.325 billion being paid by the Sacklers, those other
10 settlements would not happen. The record testimony is clear
11 on that. The private public settlement would fall apart and
12 it's in my view assured that the abatement settlement would
13 fall apart.

14 That still begs the question, however, is the
15 \$4.325 billion, coupled with the other agreements that the
16 Sacklers have made, including with respect to the dedication
17 of the two charities worth approximately \$175 million for
18 abatement purposes, their agreement to a resolution on
19 naming rights, their agreement not to engage in any opioid-
20 related business with the Debtors, or any business with
21 NewCo, and their agreement to exit their foreign companies
22 within a prescribed time sufficient? Obviously, more money
23 from the Sacklers would not unravel the settlements that
24 I've already described. However, at least that amount of
25 money is required.

1 Settlements and compromises of Debtors' claims,
2 these claims asserted or assertable by the Debtors' estates,
3 are a normal part of the process of reorganization in
4 bankruptcy and are strongly favored over litigation. This
5 is in part for the obvious reason that in bankruptcy, the
6 pie is not large enough to feed everyone in full.
7 Therefore, the cost delay factor in deciding whether to
8 approve a settlement or not is even greater than it is in a
9 non-bankruptcy context. While, obviously, an assessment of
10 the merits of the claims that are being settled has much the
11 same weight, the risks of losing a piece of the pie where
12 there's not enough to go around are also greater in a
13 bankruptcy context.

14 As far as the proposition that such settlements in
15 compromise are a normal part of the process in Chapter 11 or
16 in reorganization, see Protective Committee for Independent
17 Stockholders of TMT Trailer Ferry, F-E-R-R-Y, Inc. v.
18 Anderson, 390 U.S. 414-424 (1968). In determining whether
19 to approve a settlement in compromise, a Bankruptcy Court
20 must make an informed independent judgment that the
21 settlement is "fair and equitable" and "in the best
22 interests of the estate." In re Drexel Burnham Lambert
23 Group, Inc., 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991),
24 quoting TMT Trailer Ferry, 390 U.S., 424.

25 Based on the framework laid out in the TMT Trailer

1 Ferry Case, courts in this circuit have long considered the
2 following factors in evaluating settlements:

3 (1) The probability of success, should the issues
4 be litigated, versus the present and future benefits of the
5 settlement, without the delay and expense of litigation and
6 subsequent appeals;

7 (2) the likelihood of complex and protracted
8 litigation if the settlement is not approved, with its
9 attended expense, inconvenience and delay, including the
10 difficulty on collecting on the judgment;

11 (3) the interests of the creditors, including the
12 degree to which creditors support the proposed settlement;

13 (4) whether other interested parties support the
14 settlement;

15 (5) the competency and experience of counsel
16 supporting, and the experience and knowledge of the court in
17 reviewing the settlement;

18 (6) the nature and breadth of the releases to be
19 obtained by officers and directors or other insiders; and

20 (7) the extent to which the settlement is the product of
21 arms-length bargaining. See generally, *In re Iridium*
22 *Operating LLC*, 478 F.3d 452, 464-466 (2d Cir. 2007).

23 That case also noted that whether a settlement's
24 distribution plan complies with the Bankruptcy Code's
25 priority scheme will often be the dispositive factor. That

1 is, unless the remaining factors weigh heavily in favor of
2 approving a settlement, if the settlement varies materially,
3 the priority scheme of the Bankruptcy Code, a court should
4 normally not approve it. That issue does not apply here.

5 As I have noted in dealing with the objections to
6 classification and treatment under the plan, the plan does
7 not vary the priority scheme of the Bankruptcy Code or
8 otherwise violate the classification requirements and
9 treatment within a class of the Bankruptcy Code.

10 I will address these factors, or these elements of
11 evaluating a settlement in a different order than laid out
12 by the courts following the Iridium case. I will note that
13 they are applied even in context where part of the
14 settlement involves not the simple trade of money for a
15 claim, but also performance outcomes, such as ceasing to be
16 involved with a product or the agreement by the Sacklers to
17 the document depository and the like. See, for example,
18 Global Vision Products v. Truesdell, 2009 WL 2170253
19 (S.D.N.Y. 2009).

20 As I've noted, this settlement was clearly and
21 unmistakably the product of arm's-length bargaining
22 conducted in two separate mediations by capable mediators,
23 preceded by the most extensive discovery process, not only
24 I, but I believe any court in bankruptcy has ever seen.

25 Again, the record is unrefuted as to the

1 incredible extent of discovery taken, not only by the
2 Debtors through their Independent Committee, which again,
3 truly was independent, but also the Official Unsecured
4 Creditors Committee in consultation with the non-consenting
5 states group and the other states and governmental entities,
6 in fact anyone who wanted to sign the standard nondisclosure
7 agreement to permit the discovery to proceed without
8 extensive discovery fights over confidentiality.

9 From the very first day of the case, I made it
10 clear, as recognized also by Chief Justice Judge McMahon in
11 her affirmance of the injunction that I entered, that the
12 Sackler parties and their owned and related entities would
13 have to provide discovery far beyond the normal fishing
14 expedition discovery in bankruptcy cases in order to have
15 the benefit of the temporary injunction or any final stay,
16 and that is exactly what happened.

17 I did not have to decide one discovery dispute on
18 the record. I had numerous chambers conferences with
19 parties over discovery disputes, which led to, I believe in
20 every instance, additional discovery. There are
21 approximately 10 million documents that have been produced,
22 comprising almost -- well, it's just unfathomable the number
23 of pages.

24 Consistent with the next factor, which is the
25 competency and experience of counsel supporting the

1 settlement, not only were the Debtors represented by
2 extremely capable counsel that assisted the Independent
3 Committee in discovering the Debtors' claims against the
4 Sacklers, which are laid out in the uncontroverted
5 declarations of Richard Collura and Mark Rule, and then
6 commented on by John Dubel on behalf of the Board of Special
7 Committee, the Debtors identified over \$11 billion of
8 potentially avoidable transfers to various Sackler
9 individuals or entities.

10 The Creditors Committee did its own discovery,
11 including vetting that extensive exercise. They also
12 thoroughly investigated estate claims that are not in the
13 nature of avoidance claims avoiding transfers, but claims,
14 for example, piercing the corporate veil and breach of
15 fiduciary duty, which would belong to the estate, here,
16 I believe, because at least as far as the record reflects,
17 the basis for such claims would be a generalized injury to
18 the estate and all creditors, rather than to individual
19 creditors. See, for example, St. Paul Fire and Marine
20 Insurance Company v. PepsiCo, Inc., 884 F.2d 688, 704-705
21 (2d Cir. 1989), and Board of Trustees of Teamsters Local 683
22 Pension Fund v. Foodtown Inc., 296 F.3d 164, 169 (3d Cir.
23 2002).

24 So, again, any statement that there has not been
25 transparency in this case, at least to those who negotiated

1 the settlement, who again in essence represented all of the
2 people who are creditors in this case, the objecting states,
3 the other governmental entities, the consenting states and
4 the Creditors Committee, is simply incorrect, and
5 particularly as far as an Objecting State is concerned, it's
6 just a lie, flat-out a lie. They know what they had access
7 to. They know how extensive it was.

8 The only argument they can make -- and I will
9 address that in the future -- is that the public hasn't had
10 access to it. But, of course, if it had not been conducted
11 the way it was by the public's representatives, including
12 the very states that make this argument, there would not
13 have been that level of discovery, because it is not the
14 type of discovery that the public would ever have access to,
15 including in a trial or in, for example, an examiner's
16 examination.

17 Factors 3 and 4 are closely related to each other,
18 the interests of creditors, including the degree to which
19 creditors support the proposed settlement, and four, whether
20 other interested parties support the settlement. And again,
21 I'm talking solely about the settlement of the Debtors
22 estate's claims.

23 Given the plan vote, given the support by the
24 Official Unsecured Creditors Committee, 80 percent of the
25 states, 95 percent-plus of the other governmental entities,

1 and apparently in this context, the United States --
2 although one can't really make heads or tails of the U.S.
3 Trustee's objection on this point -- it is clear that the
4 creditor body by an overwhelming margin supports the
5 settlement, again, after being fully informed in making that
6 decision, or having their representatives be fully informed
7 in making that decision.

8 The second issue, or the second factor, which now
9 is next to last, includes an assessment of cost first, i.e.,
10 the likelihood of complex and contracted litigation if the
11 settlement is not approved, and secondly, the difficulty in
12 collecting on a judgment. I'll focus on that latter point
13 first, I'll focus on that latter part first, i.e., the
14 difficulty of collecting on a judgment.

15 As is often the case, parties who support a
16 settlement, such as here, the Creditors Committee, the
17 consenting states, the non-consenting states who now
18 consent, and the Debtors are careful not to lay out all of
19 the reasons that they support the settlement, which usually
20 go to an assessment of the merits, but generally cover legal
21 issues, including legal entitlements to collection, because
22 they are legitimately worried that either, A, the settlement
23 won't be approved, in which case they're actually going to
24 have to run the risk of having given their opponent a
25 roadmap as to the weaknesses in their case and the strengths

1 in the opponents' case, and a roadmap as to their assessment
2 of the difficulty of collection.

3 And of course, the settlement in itself does not
4 require -- because then it would not be a settlement -- a
5 full litigation on the merits or collection. I mean, that's
6 simply not, obviously, the purpose of a settlement.
7 Instead, the circuit has directed the Court to make an
8 informed judgment based on the record before it, taking into
9 account these factors.

10 At one level -- and again, it is the level that
11 has been reported in the media by some -- one would think
12 that this factor clearly weighs against the settlement. The
13 record, I believe, is uncontroverted that the Sacklers, as a
14 family, are today worth -- again, in the aggregate --
15 approximately \$11 billion. Clearly, one could collect, even
16 after the cost of collection, the lawyers' fees, the tracing
17 fees, et cetera, and the discovery has largely been taken as
18 to where the assets are. And the preliminary injunction
19 precluded the Sacklers from transferring their assets
20 further away. So, one would think that one could collect
21 something approaching significantly more than \$4.325
22 billion, plus the money that the Sacklers are paying under
23 their own settlement to the DOJ for settlement of civil
24 claims, plus the access to, or the dedication of, the \$175
25 million worth of charitable assets, which adds up to

1 something north of \$4.5 billion, plus the DOJ settlement.

2 On the other hand, the Sacklers are not a simple
3 set of defendants. They are a large family, divided into
4 two sides, Side A and B, with eight pods or groups of family
5 members within those sides or divisions. Most of the scores
6 of Sacklers never served on Purdue's Board.

7 I had testimony from three who at one time or
8 another were officers of Purdue, i.e., in management. Their
9 assets are widely scattered and primarily held offshore, or
10 by people who themselves live outside of the territorial
11 jurisdiction of the United States and might not have
12 subjected themselves sufficiently to the U.S. for a U.S.
13 court to get personal jurisdiction over them.

14 I want to be clear. I am not deciding that issue.
15 Nor am I deciding whether the trusts that most of the
16 Sackler Family wealth are held in are in fact spendthrift
17 trusts that could not be invaded to collect a judgment,
18 including in a possible bankruptcy case, if the beneficiary
19 of that trust were forced into bankruptcy by a pursuit of
20 litigation by the Debtors or, frankly, by a third-party.

21 A beneficial interest in a valid spendthrift trust
22 may be excluded from a debtor's bankruptcy estate.
23 Patterson v. Shumate, 504 U.S. 753, 757 (1992); 11 U.S.C.,
24 Section 541(c)(2), which states, a restriction on the
25 transfer of beneficial interests of the debt in a trust that

1 is enforceable under applicable non-bankruptcy law is
2 enforceable in a case under the Bankruptcy Code. That
3 section forces one to look at applicable non-bankruptcy law,
4 which may or not be the law of the United States with regard
5 to these foreign trusts, most of which are established under
6 the law of the Bailiwick of Jersey.

7 I have the expert declaration of Michael Cushing,
8 an expert in the law of the Bailiwick of Jersey and the
9 enforceability of judgments, that is, U.S. judgments,
10 against trusts organized under that law. There is a
11 substantial issue in my mind as to the collectability under
12 that law, even of a fraudulent transfer claim, although, it
13 is clear to me that under the law of various jurisdictions
14 in the U.S., including New York, that a transfer that is
15 fraudulent to creditors into a spendthrift trust is
16 recoverable for the benefit of creditors. See Securities
17 Investor Protection Corp. v. Bernard L. Madoff Investment
18 Securities LLC, 2021 WL 787604, at *10 (S.D.N.Y. 2021), and
19 In re BLMIS, 476 B.R. 715, 728, n.3 (S.D.N.Y. 2012).

20 In addition, U.S. law does not recognize self-
21 settled trusts that in name only are spendthrift trusts.
22 But again, most of the trusts here are governed by Jersey,
23 that is the Bailiwick of Jersey, law, which according to Mr.
24 Cushing's declaration, which is unopposed on these points,
25 strongly suggests that a different result might apply when

1 one would go to enforce a judgment obtained in the U.S. for
2 a fraudulent transfer, or on an in personam debt to the
3 trust in the Bailiwick of Jersey, through the Viscount of
4 Jersey and the Jersey court.

5 Again, I'm not deciding those issues, but given
6 the record before me, and given the agreement of
7 substantially all of the parties in this case to reach a
8 settlement of the estate's claims with the Sacklers, and the
9 due diligence which they have undertaken, which has not been
10 undertaken by the U.S. Trustee, one could infer that the
11 issue of collection is at least a real one.

12 In addition, Iridium factor number two also takes
13 into account, or requires the Court to take into account,
14 the cost and delay of continued litigation, as opposed to
15 the benefits of a settlement. The cost and delay here, I
16 believe, on an uncontroverted basis for not approving the
17 settlement would be substantial. Those costs are not just
18 the direct costs of pursuing the litigation, the discovery
19 for which has largely occurred, but the litigation pursuit,
20 including a trial, would have to take place.

21 But in addition to that, there is the cost
22 resulting from the unraveling of the other settlements that
23 I have just described. And I believe that the record here
24 strongly reflects that if the settlement of the Debtors'
25 claims, the estate's claims, were not approved, the parties

1 would be back essentially to square one on allocating the
2 value of the Debtors' estate, including any ultimate
3 recovery on the estate's litigation claims.

4 In that regard, the litigation analysis reflected
5 in Mr. DelConte's second declaration, which contains a
6 liquidation analysis, is instructive. Under the most
7 realistic scenarios, there would be literally no recovery by
8 unsecured creditors from the estate in a Chapter 7
9 liquidation, which is, I believe, the most likely result if
10 this settlement were not approved, given the unraveling of
11 the heavily negotiated and intricately woven compromises in
12 the plan.

13 One reason for that is that in a liquidation
14 scenario, the United States' agreement to forego \$1.7
15 billion of its \$2 billion superpriority administrative claim
16 for the benefit of the abatement program by the states would
17 disappear. The United States would be entitled to all of
18 that money first.

19 That leaves the last factor, which really in most
20 settlements is the most, or depending on the difficulty of
21 collection, one of the most important factors, namely a
22 comparison of the results of litigation as against the
23 results of a settlement.

24 As I noted, as with the issue of difficulty of
25 collection, the parties supporting the settlement have been

1 careful not to lay out their views of the defenses that the
2 Sacklers released parties would have to the estate's claims.
3 And of course, because it is a settlement, there's been no
4 trial on the merits of those claims.

5 On the other hand, I do have reports as to the
6 nature of the transfers, when they occurred, what they were,
7 and who they were to, and also some testimony as to the
8 involvement of some of the Sacklers in the running of
9 Purdue, which is relevant to the estate's claims, separate
10 and apart from avoidance of fraudulent transfers, namely
11 claims for piercing the corporate veil, alter-ego liability,
12 breach of fiduciary duty, and the like.

13 I also have an extensive submission by both sides
14 of the Sackler Family, or submissions by both sides of the
15 Sackler Family, that do state the defenses they would argue.
16 I heard the testimony of four members of the Sackler Family,
17 two from Side A and two from Side B, and that too is
18 informed by views on the merits here, although that
19 testimony primarily went not to fraudulent transfer claims
20 but to other claims related to their role in Purdue's
21 governance, and the decisions made that have led to
22 trillions of dollars of claims being filed against Purdue
23 and a criminal plea and settlement by Purdue with the
24 Department of Justice from 2020.

25 Again, I want to be clear, I'm not making a

1 decision anywhere close to being on the merits. This
2 assessment is not, therefore, in any way something that
3 could serve as collateral estoppel or res judicata. Nor do
4 I particularly have any fondness for the Sacklers or
5 sympathy for them.

6 I will note the following, however. The Sackler
7 Family, 77, I believe, of them, received comprehensive
8 releases from almost all of the states in 2007. In
9 addition, 2007 is about as far back under any theory that
10 one could look to avoid a fraudulent transfer.

11 So one would, both for estate claims and for
12 third-party claims, be looking at primarily, if not
13 exclusively, actions by the Sacklers or transfers that took
14 place after 2007. Over 40 percent of those transfers went
15 to pay taxes, including in large amounts to certain of the
16 objecting states or the states that continue to object to
17 the plan. The fact that it went to pay taxes did obviously
18 relieve the Sacklers of an obligation.

19 I do, however, have testimony from Jennifer
20 Blouin, that if the partnership structure of Purdue was not
21 in place with the taxes running through the Sacklers, Purdue
22 itself would be liable for them and, therefore, arguably
23 received fair consideration for the payment.

24 The Sacklers would also argue that after the 2007
25 settlement with the federal government and the states, the

1 U.S. Department of Health and Human Services entered into a
2 five-year corporate integrity agreement with the company to
3 monitor its compliance with federal healthcare law, which
4 took place from July 31, 2007 to July 30, 2012. And that
5 agreement is available as part of the record, but it can
6 also be obtained as a matter of judicial notice.

7 In 2015, well after Purdue implemented a "Abuse
8 and Diversion Detection program", the New York Attorney
9 General required that program to be subject to annual
10 reviews from 2015 to 2018. They would argue that that
11 compliance, both with the OIG monitor and those reviews,
12 detailed no improper actions by Purdue, and therefore, there
13 couldn't be any improper actions by the Board.

14 In addition, they would argue that solely as Board
15 members, they would not have a fiduciary duty for actions of
16 Purdue and its management that were improper or unlawful,
17 unless they were aware of them. Of course, it would be very
18 much a triable issue as to whether they were in fact aware
19 of them. Those who were not on the Board, of course, would
20 say that law didn't even apply to them.

21 They would also argue the applicability of various
22 statutes of limitations to the fraudulent transfer claims
23 that would limit the reach-back by the estate to most of the
24 claims. The estate would have arguments to the contrary,
25 based on rights that unique creditors like the federal

1 government would have to serve as a "Golden Creditor" under
2 Section 544 of the Bankruptcy Code.

3 The Sacklers would also argue that following the
4 2007 settlement, Purdue paid manageable amounts in
5 settlements between 2008 and 2019 of litigation claims
6 related to opioid matters or other litigations that would
7 affect the solvency of Purdue, and that as recently as 2016,
8 Purdue was receiving ratings from rating agencies that
9 indicated that it was financially healthy, and therefore,
10 they would contend, except for the last year or so before
11 the bankruptcy filing date, were only a very small amount,
12 relatively speaking, of the roughly \$11 billion of transfers
13 that the Debtors' estate would contend are avoidable took
14 place. Purdue was not insolvent, and one could not impute
15 intentional fraudulent transfer liability to it.

16 Of course, there are statements in the record to
17 suggest that the Sacklers were very aware of the risk of
18 litigation. A trial might well also establish, as some of
19 the testimony that I heard from the Sacklers that as a
20 closely held company, Purdue was run more than by a normal
21 board, by its Board and shareholders, i.e., the Sacklers,
22 and that notwithstanding the denials by the Sacklers who
23 testified, at least those who were on the Board, and perhaps
24 others who with the votes of their family members could
25 control ultimately the Board, were aware of the harms of

1 Purdue's product and should not have rested or taken comfort
2 in either of the FDA's sign-off on various labels and
3 marketing initiatives or the reports by the Office of the
4 Inspector General or the auditor of the Abuse and Diversion
5 Detection program.

6 I believe that standing in a vacuum on the merits,
7 the claims that would be achieved, the ultimate judgment
8 that would be achieved on the estate's claims and related
9 third-party claims that are being settled under the plan,
10 would be higher than the amount that the Sacklers are
11 contributing. But I do not believe that they would be
12 higher after taking into account the catastrophic effect on
13 recoveries that would result from pursuing those claims and
14 unravelling the plan's intricate settlements. And as I said
15 at the beginning of this analysis, there is also the issue
16 of problems that would be faced in collection.

17 This is a bitter result. B-I-T-T-E-R. It is
18 incredibly frustrating that the law recognizes, albeit with
19 some exceptions, although fairly narrow, the enforceability
20 of spendthrift trusts. It is incredibly frustrating that
21 people can send their money offshore to offshore spendthrift
22 trusts that may not recognize U.S. law.

23 It is incredibly frustrating that the vast size of
24 the claims against Purdue and the vast number of claimants
25 creates the need for the intricate plan settlements, since

1 at least in some measure I believe that at least some of the
2 Sackler parties also have liability for those claims. But
3 those things are all facts that anyone who is a fiduciary
4 for the creditor body would have to recognize, and that I
5 recognize.

6 A settlement is not evaluated in a vacuum as a
7 wish list. It takes an agreement, which means that it
8 generally, if properly negotiated -- and I believe that's
9 clearly the case here -- reflects the underlying strengths
10 and weaknesses of the parties' legal position and issues of
11 collection; not moral issues, or how someone might see moral
12 issues.

13 It's not enough to say we need more, or I don't
14 care whether we don't get anything; I'd rather see it all
15 burned up. One has to really focus on the consequences of
16 those two approaches.

17 I must say that when I approached the middle stage
18 of this case before the mediation, I would have expected a
19 higher settlement. And frankly, anyone with half a brain
20 would know that when I directed a second mediation,
21 courageously undertaken by Judge Chapman, I expected a
22 higher settlement. Nevertheless, extremely well-represented
23 and dedicated parties on the Plaintiffs' side, knowing far
24 more than I have laid out today of the strengths and
25 weaknesses of the case and collection and the like, agreed

1 to this settlement.

2 I am not prepared, given all of the record before
3 me, to risk that agreement. I do not have the ability to
4 impose what I would like on the parties. The Judge is not
5 given that power. I can only turn down the request for
6 approval of it. Given this record, I'm not prepared to do
7 that, as much as I would like to impose a higher recovery.

8 I will note, as far as the bona fides of the
9 settlement is concerned, and notwithstanding my
10 reservations, 100 percent of this formerly closely-held
11 company -- that is, closely held by the Sacklers -- is under
12 this plan taken away from them and devoted to abating
13 opioids' ill effects in one way or another.

14 In addition, the amount being paid is to my
15 knowledge the highest amount any shareholder group has paid
16 for these types of claims. Throughout the history of
17 litigation involving Purdue, the Sacklers themselves were
18 not targets, except for the relatively modest settlements
19 that they entered into with the states in 2007 until very
20 recently. The entire negotiation process in this context
21 has magnified that target on them, on that focus on them.

22 While I would wish that the amount would be
23 higher, as I believe everyone on the other side in this
24 case, including the Debtors does, the settlement itself
25 fairly reflects the standards laid out by the Supreme Court

1 in the Second Circuit in evaluating a settlement. And
2 clearly, both it and the process in arriving at it has not
3 been in any shape or form a free ride for the Sacklers or
4 enabled them to "get away with it."

5 If what people mean by getting away with it is
6 getting relieved of criminal liability, that is obviously
7 not the case. And I believe, given all of the factors that
8 I've outlined, they are paying a substantial, and under the
9 circumstances of this case, approvable amount, as well as
10 the other aspects of the settlement that they are agreeing
11 to.

12 I will note, finally, that as alluded to this
13 morning by the Debtors' counsel, they have agreed also to
14 enforcement mechanisms that are quite rigorous as part of
15 the settlement agreement, so that the collection problems
16 that I had addressed, or the potential collection problems,
17 are far lessened by the settlement if they don't live up to
18 it, including as to the ability to hide behind foreign
19 spendthrift trusts.

20 So, to the extent that objectors have objected to
21 the merits of the settlement of the Debtors' estate's
22 claims, I will overrule those objections.

23 That leaves the last issue for determination,
24 which is the most complex issue. It is in large measure
25 informed by the analysis that I've just gone through, which

1 as I'm sure you'll note, included not just an assessment of
2 the estate's claims, when considering the alternative to the
3 estate settlement, but also the merits of third-party claims
4 closely related to the estate's claims, and particularly
5 focused on claims beyond fraudulent transfer avoidance.

6 There are multiple grounds for the objecting
7 parties' objection to the non-consensual release under the
8 plan and injunction of their third-party claims against the
9 shareholder settling parties.

10 I will note that certain of those objections went
11 to issues that I agreed with the objectors over, namely the
12 breadth of the releases in the plan. The current form of
13 the plan has substantially narrowed those releases. The
14 settling shareholder parties, unless, of course, they
15 default on the settlement, are now being released only of
16 opioid-related claims of third-parties, and I will go into
17 in detail what that release involves.

18 Other released parties are released as well under
19 the plan, but it is clear, given the revised definitions,
20 including those that came in overnight, that those releases
21 deal with a release of claims that are truly derivative of
22 the Debtors and simply prevent third-parties from going
23 after those parties through the back door, only to later
24 learn that those claims had been released by the Debtors
25 under the plan.

1 The first objection to the third-party release of
2 the Sacklers is a jurisdictional one, i.e., the contention
3 that the Court lacks jurisdiction -- subject matter
4 jurisdiction, to impose the release of the shareholder
5 released parties on those who do not consent to it and who
6 have, in fact, objected to it.

7 It's axiomatic that federal courts, including the
8 bankruptcy courts, have only the jurisdiction given to them
9 and no more. Under 28 U.S.C. Section 1334(b), however, the
10 bankruptcy courts, through the reference from the district
11 courts in 28 U.S.C. 157, do have broad jurisdiction with
12 respect to matters that are related to the Debtors' property
13 and case.

14 This includes the power to enjoin claims of third-
15 parties that have a conceivable effect on the Debtors'
16 estate. As noted by the Supreme Court in *Celotex Corp. v.*
17 *Edwards*, which involved a preliminary injunction of a third-
18 party's right to pursue a third-party claim, 15 U.S. 300,
19 307-308 (1995). "Congress did not delineate the scope of
20 'related to' jurisdiction, but its choice of words suggests
21 a grant of some breadth."

22 In this circuit, "A civil proceeding is related to
23 Title XI case if the action's outcome might have any
24 conceivable effect on the bankrupt estate." See *SPV OSUS,*
25 *Limited v. UBS AG*, 882 F.3d 333, 339-40, citing *Parmalat*

1 Capital Finance, Limited v. Bank of America Corp., 639 F.3d
2 572, 579 (2d Cir. 2001).

3 That jurisdiction is not limitless, id., but it
4 does extend to where there is a legal effect, even through
5 an indemnification agreement or contribution rights,
6 including by, as set forth in the SPV OSUS case, someone who
7 has not, despite those rights, filed a proof of claim in the
8 case. The Second Circuit has extensively dealt with this
9 issue in the context of this Court's jurisdiction over
10 actions to stay or prevent the assertion of third-party
11 claims in bankruptcy cases, the most recent version of
12 which, which the objectors largely ignored, if not entirely
13 ignored, is the Second Circuit's decision in In re Quigley
14 Company, 676 F.3d 45 (2d Cir. 2012).

15 The court there went through a lengthy analysis of
16 its jurisdiction -- bankruptcy jurisdiction, that is -- to
17 preclude the pursuit of a third-party claim, including an
18 analysis of Section 1334 of the Judicial Code which provides
19 for original jurisdiction in the district courts, which is
20 then referred under section -- 28 U.S.C. Section 157 for,
21 "all cases under Title XI," and "all civil proceedings
22 arising under Title XI or arising in or related to cases
23 under Title XI."

24 The dispute in Quigley reflected some arguable
25 confusion in the Second Circuit over the extent of this

1 jurisdiction when dealing with an injunction of third-party
2 claims, including under a plan, that was arguably injected
3 by the circuit in a case that the objectors do extensively
4 cite, *In re Johns-Manville Corp.*, 517 F.3d 52 (2d Cir.
5 2008), reversed sub nom *Travelers Indemnity Company v.*
6 *Bailey*, 557 U.S. 137 (2009), which the Circuit in the
7 *Quigley* case refers to as *Manville III*.

8 In that case, the Circuit had left the impression
9 that the only source for jurisdiction to enter a course of
10 release of third-party claims and an injunction to support
11 it is where the claim would be a derivative claim. I'll
12 come back to that point in a moment.

13 The point was somewhat cleared up in the next
14 *Manville* case, referred to as *Manville IV* in the *Quigley*
15 opinion, appearing at 600 F.3d 152. But the *Quigley* case
16 took it head on. In that case, a party who had brought a
17 third-party claim against an insurer, notwithstanding the
18 *Manville* Chapter 11 plan's injunction of claims against
19 insurers, asserting that the bankruptcy court did not have
20 jurisdiction to enjoin such a claim because it alleged a
21 violation of an independent legal duty owed by the
22 defendant, a third-party, rather than claims that are
23 "derivative."

24 The Circuit disagreed that that was the limitation
25 on jurisdiction imposed by it in *Manville III*, 676 F.3d at

1 54. The Circuit went on to say, because the third-party's
2 mistake as to the nature of the jurisdictional inquiry under
3 28 U.S.C. 1534(b) stems from a misunderstanding of our
4 caselaw's treatment of derivative liability in the context
5 of bankruptcy jurisdiction, we discuss our previous cases
6 addressing this subject in some detail.

7 It then goes on to state, "After analyzing
8 Manville I, the MacArthur Company v. Johns-Manville Corp.
9 case at 837 F.2d 89, that there was no independent
10 requirement of a derivative claims for the exercise of
11 jurisdiction. Rather, the claim was based upon the effect
12 of the third-party claim on the estate."

13 The Circuit then went on to state, "Manville III
14 did not work a change in our jurisprudence. After Manville
15 II, as before, a bankruptcy court has jurisdiction to enjoin
16 third-party non-Debtor claims that directly affect the res
17 of the bankruptcy estate.

18 "As in MacArthur, the salience of Manville III's
19 inquiry as to whether Travelers' ability was derivative of
20 the Debtor's rights and liabilities was that, in the facts
21 and circumstances of Manville III, cases alleging derivative
22 liability would affect the res of the bankruptcy estate,
23 whereas, cases alleging non-derivative liability would not.

24 "However, it did not impose a requirement that an
25 action must both directly affect the estate and be

1 derivative of the Debtors' rights and liabilities for
2 bankruptcy jurisdiction over the action to exist." 676 at
3 56 through 57.

4 It then further discussed the Manville IV case and
5 then stated, "It thus appears that our case, from our
6 caselaw, that while we have treated whether a suit seeks to
7 impose derivative liability as a helpful way to assess
8 whether it has the potential to affect the bankruptcy res,
9 the touchstone for bankruptcy jurisdiction remains 'whether
10 its outcome might have any conceivable effect on the
11 bankruptcy estate.'"

12 This test has been -- I'm continuing now, because
13 I'm omitting the citation. "This test has been almost
14 universally adopted by our sister circuit," citing the
15 Celotex Corp. that I previously cited, collected case,
16 "which in some instances have found bankruptcy jurisdiction
17 to exist over non-derivative claims against third-parties.
18 See -- citing In re Stonebridge Technologies, Inc., 430 F.3d
19 260, 263-64 and 267 (5th Cir. 2005) and In re Dogpatch USA,
20 Inc., 810 F.2d 782, 786 (8th Cir. 1987).

21 And then stating, "A suit against a third-party
22 alleging liability not derivative of the Debtors' conduct
23 but that nevertheless poses the specter of direct impact on
24 the res of the bankrupt estate may just as surely impair the
25 bankruptcy court's ability to make a fair distribution of

1 the bankrupt's assets as a third-party suit alleging
2 derivative liability.

3 "Accordingly, we conclude that where litigation of
4 the third-party suits against the third-party would almost
5 certainly result in the drawing down of insurance policies
6 that are part of the bankruptcy estate of the Debtor, the
7 exercise of bankruptcy jurisdiction to enjoin these suits
8 was appropriate."

9 I conclude here, based upon the adverse effect of
10 the third-party claims that are covered by the shareholder
11 release, as I will further narrow it, do affect the res of
12 the estate, including insurance rights, and rights to
13 indemnification and the Debtors' ability to pursue its own
14 claims.

15 Certain of the objectors cite a pre-Bankruptcy
16 Code, pre-28 U.S.C. Section 1334 case from the Supreme
17 Court, Callaway v. Benton, 336 U.S. 132 (1948), for the
18 proposition that there is no such jurisdiction. Of course,
19 Section 1334 is broader than the jurisdictional mandate that
20 applied at that time in that case.

21 "It is rather a dramatic change to the
22 jurisdictional scheme from the bankruptcy laws administered
23 before that time and is meant to be interpreted broadly, as
24 laid out by the caselaw, as well as commentators. See
25 Howard C. Buschman, III and Sean P. Madden, "Power and

1 Propriety of Bankruptcy Court Intervention and Actions
2 Between Non-debtors," 47 Business Lawyer 913, 914-19, May
3 1992. See also In re Dow Corning Corp., 255 B.R. 445 (E.D.
4 Mich. 2002), vacated on other grounds, Class Five Nevada
5 Claimants V. Dow Corning Corp. (In re Dow Corning Corp.) 280
6 F.3d 848 (6th Cir. 2002).

7 One example of the Court's recognition of the
8 breadth of bankruptcy jurisdiction under the Bankruptcy Code
9 in 28 U.S.C. Section 1334, although not directly on point,
10 is United States v. Energy Resources Company in 495 U.S. 545
11 (1990). Although, again, the Court must go through the
12 analysis gone through by Quigley and other courts to find
13 the necessary conceivable effect on the Debtors' estate for
14 there to be subject matter jurisdiction, although I have
15 done that here.

16 I will note that another case that the objectors
17 rely on, In re Aegean Marine Petroleum Network, Inc., 599
18 B.R. 717 (Bankr. SDNY 2019) as questioning the ability of
19 the bankruptcy court to ever impose a release of a third-
20 party claim as a jurisdictional matter, which case cites the
21 Callaway v. Benton case, and does not cite the Quigley case
22 because -- well, I don't know why, maybe it wasn't raised to
23 a judge -- nevertheless acknowledges that where there is "a
24 huge overlap between claims that a debtor is making against
25 its parent company and various other parties were making

1 against that non-debtor company or where there is a direct
2 connection between the asset or the claims of the debtor and
3 the contributions that were being made for both resolving
4 those claims and claims basically aligned with those claims,
5 those estate claims, such a release would be appropriate,"
6 id. at 727.

7 So, I conclude that there is, depending on the
8 nature of the release, jurisdiction to enter an order
9 enforcing a plan that has such a third-party claim release
10 in it and that that jurisdiction is based upon the effect of
11 the claims on the estate, rather than that the claims are
12 "derivative." Although, if they are derivative, that is a
13 good sign that they affect the estate. Again, see Quigley,
14 676 F.3d at 52.

15 The objectors have also raised the objection that
16 the release of third-party claims is a violation of due
17 process under the Constitution. There are really two
18 aspects to this objection. The first is one that the courts
19 in this circuit do not accept, which is that such a release
20 is an adjudication of the claim. It is not. It is part of
21 the settlement of the claim that channels the settlement
22 funds to the estate. See *Manville I*, 837 F.2d 89, 91-92 (2d
23 Cir. 1988) and *In re Kirwan Offices, S.a.R.L., Lynch v.*
24 *Lapidem, Limited*, 592 B.R. 489, 504-505.

25 See also *In re Millennium Lab Holdings, II, LLC*,

1 575 B.R. 252, 273 (Bankr. D. Del. 2017), affirmed 591 B.R.
2 559 (D. Del. 2018), affirmed 945 F.3d 126 (3d Cir. 2019),
3 cert. denied, 140 S. Ct. 2085 (2020). "An order confirming
4 the plan with releases does not rule on the merits of the
5 state law claims" -- or in this case, third-party claims --
6 "being released."

7 The other aspect of the due process objection goes
8 to the notice that was provided with respect to the release.
9 It is now clear, under the plan, that only holders of claims
10 against the Debtor or Debtors are being released under the
11 third-party shareholder release, and it is clear from the
12 factual record that holders of claims received, in my view,
13 due process notice, not only of the bankruptcy case, but of
14 the plan's intention to provide a broad release of third-
15 party claims against the shareholders and their related
16 entities related to the Debtors as a whole.

17 Indeed, at that time, with that notice, including
18 the simple form notice that went out, the release was far
19 broader than it is today. To argue that because it was more
20 complicated then, because it was broader, is somehow a
21 violation of due process, is equally incorrect. Ultimately,
22 the issue of what process is due requires a court to ask
23 whether in the connection with the confirmation hearing
24 notice was sent that was reasonably calculated under all the
25 circumstances to apprise interested parties of the pendency

1 of the request and afford them an opportunity to present
2 their objections. *Mullane v. Central Hanover Bank and Trust*
3 *Company*, 339 U.S. 306, 314 (1950).

4 See also *Elliot v. GM, LLC (In re Motors*
5 *Liquidation Company)*, 829 F.3d 135, 158 (2d Cir. 2016). As
6 noted by the Circuit in that case, this requirement
7 obviously applies to bankruptcy proceedings and there,
8 notice turns upon what is reasonably known by the Debtor of
9 the party who would be affected by the action that the
10 Debtor is taking.

11 It appears, to me, again, based upon Ms. Finegan's
12 testimony, that holders of claims received sufficient notice
13 of the release. Indeed, the broader assumption, I believe,
14 fostered in the media is that the release even included
15 criminal liability, which it doesn't. In fact, there were
16 multiple objections to the plan, based upon the third-party
17 release, and I conclude that compliance with the procedures
18 laid out by Ms. Finegan and with the dictates of Bankruptcy
19 Rule 3016, which requires bolding of the release language,
20 is, in fact, sufficient.

21 See, for example, *In re Otero County Hospital*
22 *Association, Inc.*, 551 B.R. 463, 471-2 and 478-79 (Bankr.
23 D.N.M. 2016), *In re Retail Group, Inc.*, 2021 WL 2188929
24 (Bankr. E.D. Va. May 28, 2021), and *Finova Capital Corp. v.*
25 *Larson Pharmaceutical Inc.*, 2003 U.S. Dist. LEXIS 26681,

1 affirmed Finova Capital Corp. v. Larson Pharmacy, Inc. 425
2 F. 3d, 1294 (11th Cir. 2005).

3 If someone can make the case after the fact that
4 they did not receive the type of notice that Ms. Finegan
5 testified to or the Debtor could be said to be aware of them
6 actually, and therefore, given them improved notice, they
7 would have the right to come back and argue that, as was the
8 case in the Motors Liquidation Second Circuit opinion that
9 I've cited.

10 But as far as the record before me is concerned, I
11 find that the notice of the plan, confirmation hearing and
12 request for approval of the third-party release satisfied
13 due process.

14 The next objection to the third-party release
15 provision in the plan pertaining to the shareholder
16 settlement is an objection based on the power of the
17 bankruptcy court to issue a final order confirming the plan
18 as opposed to the bankruptcy court's jurisdiction to approve
19 confirmation of the plan as it related to jurisdictional
20 matter under 1334(b) and (a).

21 This issue was not addressed until fairly
22 recently, but it has been addressed now at length in two
23 opinions that I will simply refer to, because I believe the
24 logic of these opinions cannot be improved upon as far as
25 the bankruptcy court's authority in the context of a

1 concededly core proceeding, namely consideration of whether
2 a Chapter 11 plan should be confirmed or not, which is the
3 fundamentally central aspect of a Chapter 11 case, is, in
4 fact, core, not only under 28 U.S.C. 157(b) but also core as
5 a constitutional matter, being within the power
6 traditionally exercised by bankruptcy courts to confirm
7 plans and provide for the allocation of property of the
8 estate.

9 So, I will refer parties to those opinions. See
10 In re Millennium Lab Holdings II, LLC, 945 F.3d 126, cert.
11 denied, Loan Trust v. Millennium Lab Holdings, 2020 U.S.
12 LEXIS 2850 (May 26, 2020). I'd also commend, as did that
13 court, the lower court opinions in that case, Opt-Out
14 Lenders v. Millennium Lab Holdings II, LLC, 591 B.R. 559 (D.
15 Del. 2018) and In re Millennium Lab Holdings II, LLC, 575
16 B.R. 252 (Bankr. D. Del. 2017).

17 Also applicable here, I believe, directly on point
18 is Lynch v. Lapidem Limited, In re Kirwan Offices, S.a.R.L.,
19 492 B.R. 489 (SDNY 2018), affirmed Lynch v. Mascini
20 Holdings, Limited, In re Kirwan Office, S.R.L. 2019 U.S.
21 App. LEXIS 38068 (2d Cir. 2019).

22 I will note that in that affirmance, the Circuit
23 did not reach the determination by former Chief Judge
24 McMahon that this was a core -- this type of injunction is a
25 core proceeding within a core proceeding, but I believe her

1 logic is correct and I believe that that logic would
2 distinguish her statement in *Dunaway v. Purdue Pharma, LP*,
3 619 B.R. 318, where she was dealing not with a Chapter 11
4 plan, but rather a request for a preliminary injunction
5 under 105 of the Bankruptcy Code, and in that context,
6 concluded, I believe correctly, although she was reversing
7 me on the point, that in that context, the court had only
8 related-to jurisdiction because it was not a core matter
9 like a plan. At least, that's how I read the decision.

10 That still leaves, however, the merits of the
11 application of the court's jurisdiction and power to enter a
12 final order to the third-party claim release an injunction
13 in the plan pertaining to the shareholder release parties.

14 Most of the caselaw on this topic -- and there is
15 a lot of caselaw at the circuit level as well as at the
16 lower court level -- does not deal with the foregoing
17 jurisdictional and Article III, Article I power issues. It
18 deals with the statutory source for the claimed ability to
19 enforce a coercive release of a third-party claim and the
20 limited circumstances in which that would occur.

21 Every circuit at this point has an opinion on the
22 issue. The clear majority of circuits supports the issuance
23 of releases on a coercive basis of third-party claims under
24 appropriate, narrow circumstances. *Monarch Life Insurance*
25 *Company v. Ropes and Gray*, 65 F.3d 973, 984-85 (1st Cir.

1 1995), Deutsche Bank A.G. v. Metromedia Fiber Network, Inc.
2 (In re Metromedia Fiber Network, Inc.) 416 F.3d 136, 141
3 (2d. Cir. 2005) and the cases cited therein from the Second
4 Circuit, including the Manville case that I previously cited
5 as well as the Drexel case which I'll cite in a moment.

6 In re Millennium Lab Holdings II, LLC, which I've
7 just cited from the Third Circuit, 945 F.3d 126, 133-40.
8 National Heritage Foundation, Inc. v. Highbourne Foundation,
9 Inc., 760 F.3d 344, 350 (4th Cir. 2014), cert. denied, 135
10 S. Ct. 961 (2015) and In re A.H. Robins Company, Inc., 880
11 F.2d 694, 700-02 (4th Cir. 1989), In re Dow Corning Corp.,
12 280 F.3d 648, 656-58 (2nd Cir. 2002), In re Airadigm
13 Communications, Inc., 519 F.3d 640, 655-59 (7th Cir. 2008),
14 and In re Ingersoll, Inc., 562 F.3d 856 (7th Cir. 2009),
15 which held even that those who hold -- who don't hold a
16 claim against the Debtors' estate can be bound by such a
17 release under appropriate circumstances.

18 In re Seaside Engineering and Surveying, Inc., 780
19 F.3d 1070, 1076-79 (11th Cir. 2015) and In re AOV
20 Industries, Inc., 792 F.2d 1140, 1153 (D.C. Cir. 1986).

21 Three circuits are on record as holding that
22 third-party releases are improper for a bankruptcy court or
23 a court exercising bankruptcy jurisdiction to compel on a
24 third-party. See Bank of New York Trust Company v. Official
25 Unsecured Creditors Committee (In re Pacific Lumber

1 Company), 584 F.3d 229, 252 (5th Cir. 2009), Resorts
2 International v. Lowenschuss (In re Lowenschuss), 67 F.3d
3 1394, 1401-02 (9th Cir. 1995) and Lansing Diversified
4 Properties-II v. First National Bank and Trust Company of
5 Tulsa (In re Real Estate Fund, Inc.) 922 F.2d 592, 600 (10th
6 Cir. 1990).

7 The following can be said about those three cases
8 or the line of cases from those three courts. First, they
9 are based fundamentally on a view that Section 524(e) of the
10 Bankruptcy Code precludes the grant of such a release. That
11 section says, "Except as provided in Subsection A3 of this
12 Section" -- which is irrelevant here -- "discharge of a debt
13 of the debtor does not affect the liability of any other
14 entity on or the property of any other entity for such
15 debt."

16 I will note in a moment that several of the cases,
17 and I believe they employ the right analysis, including the
18 Second Circuit's Manville I case, refute that view as a
19 statutory matter. I will note further that in the Pacific
20 Lumber case, the Fifth Circuit noted, "Non-debtor releases
21 are most appropriate as a method to channel mass claims
22 toward a specific pool of assets in a context of 'global
23 settlements' of mass claims against the Debtors and co-
24 liable parties," citing a similar observation by the Fifth
25 circuit in Feld v. Zale Corp., 62 F.3d 746, 760-61 (5th Cir.

1 1995) .

2 That quote was from 584 F.3d 252 from the Fifth
3 Circuit's Pacific Lumber case. I will note further, that
4 notwithstanding its reliance on Section 524(e) as precluding
5 any release which the Circuit had in Lowenschuss and prior
6 case such as In re American Hardwood, 885 F.2d 621 (9th Cir.
7 1989), equated with a discharge. The circuit -- the Ninth
8 Circuit held that a release of a third-party claim limited
9 to actions taken in or related to the bankruptcy case could,
10 in appropriate circumstances, be imposed in a plan, which
11 undercuts the 524(e) analysis, since post-bankruptcy, pre-
12 confirmation claims would be subject to the discharge as
13 well. 961 F.3d 107 -- I'm sorry.

14 See Blixseth v. Credit Suisse, 961 F.3d 1074,
15 1081-85 (9th Cir. 2020). I will note further that the
16 Western Real Estate Fund case from the Tenth Circuit from
17 1990 did recognize, as the American Hardwoods case also
18 recognized, the propriety of imposing a temporary stay of
19 third-party claims to "facilitate the reorganization
20 process," one wonders why, if one is not bound by the 524(e)
21 arguments, such a temporary stay could not become a
22 permanent stay if the reorganization process would be
23 appropriately facilitated over the objections of a small
24 number of creditors who assert third-party claims.

25 In any event, that opinion, has been interpreted,

1 and, I believe, cogently, although fairly bravely, by a
2 court in the Tenth Circuit as not standing for the
3 proposition that 524(e) of the Bankruptcy Code clearly
4 precludes all third-party releases and that Section 105(a)
5 of the Bankruptcy Code and other applicable bankruptcy law
6 might, in appropriate circumstances, justify a release of
7 third-party claims. In re Midway Gold, 575 B.R. 475, 505
8 (Bankr. D. Colo. 2017).

9 The argument upon which the three cases that I've
10 just gone through at some length from the Fifth, Ninth, and
11 Tenth Circuit, which go against the majority of cases
12 dealing with third-party releases, relies upon a theory that
13 Section 524(e)'s language, which I've quoted, precludes to
14 grant a release as part of a settlement under a plan.

15 This view, I believe, is appropriately addressed
16 and refuted by a number of courts, including the Airadigm
17 Communications, Inc., 519 F.3d 640, and the Sixth Circuit in
18 In re Dow Corning Corp., 280 F.3d 648 (2006).

19 It's also effectively refuted by the distinction
20 made in the Manville and Lynch v. Lapidem cases that I
21 previously cited, which distinguish a discharge from a
22 settlement of claims.

23 It is also inconsistent with Section 524 itself;
24 524(g) of the Bankruptcy Code specifically provides for
25 certain third-party releases, if certain conditions are met

1 in a plan that deals with asbestos liabilities and a trust
2 set up for asbestos liabilities, including the affirmative
3 vote of the affected class in a super-majority of 75
4 percent, which, as I've noted here, has been well exceeded.

5 But more importantly, Section 524(h) of the
6 Bankruptcy Code recognizes that this provision, 524(g), does
7 not mean that plans that were confirmed before the enactment
8 of Section 524(g) are, in fact, unlawful. And indeed, the
9 legislative history to the amendment makes that point,
10 stating Section, at that point 111, but it became 524(h).

11 "Makes a rule of construction to make clear that
12 the special rule being devised for the asbestos claim
13 trust/injunction mechanism is not intended to alter any
14 authority bankruptcy courts may already have to issue
15 injunctions in connection with a plan of reorganization.
16 Indeed, Johns-Manville and UNR firmly believe that the court
17 in their cases had full authority to approve the trust
18 injunction mechanism, and other debtors in other industries
19 are reportedly beginning to experiment with similar
20 mechanisms.

21 "The Committee expresses no opinion as to how much
22 authority a bankruptcy court may generally have under its
23 traditional equitable powers to issue an enforceable
24 injunction of this kind. The Committee has decided to
25 provide explicit authority in the asbestos area because of

1 the singular, cumulative magnitude of the claims involved.
2 How the new statutory mechanism works in the asbestos area
3 may help the Committee judge whether the concept should be
4 extended into other areas." 140 Cong. Rec. H-10752-01,
5 appearing in 1994 WL 54573, (October 4, 1994).

6 Similar commentary appears in Senator Heflin's
7 remarks appearing at 140 Cong. Rec. S14461-01, 1994 WL
8 553390 at S14461 regarding the Bankruptcy Reform Act of
9 1994, where Senator Heflin states, "Finally, Mr. President,
10 with respect to the senator's specific question, this
11 section applies to injunction in effect on or after the date
12 of enactment."

13 What that means is, for any injunction that may
14 have been issued under a court's authority under the code
15 prior to enactment, such an injunction is afforded statutory
16 permanence from the date of enactment forward, assuming that
17 it otherwise meets the qualifying criteria described
18 earlier.

19 It appears clear to me, therefore, under well-
20 reasoned caselaw as well as the code itself that 524(e) is
21 not an impediment to the court's -- statutory impediment,
22 that is, to the court's issuance or enforcement of a third-
23 party claim release in appropriate circumstances.

24 That raises the issue, however, what is the
25 court's statutory or other source of power, which also has

1 been discussed ably, I believe -- it's not really my
2 position to comment one way or the other as to whether it's
3 able or not, but it's been discussed thoroughly, I believe,
4 and appropriately applied at the appellate level.

5 Again, see *In re Airadigm Communications, Inc.*,
6 519 F.3d 640, 657 (7th Cir. 2008), where the Circuit after
7 determining that Section 524(e) is not a bar to the grant of
8 release, states, "The second related question dividing the
9 circuits is whether Congress affirmatively gave the
10 bankruptcy court the power to release third-parties from a
11 creditor's claims without the creditor's consent, even if
12 524(e) does not expressly preclude the releases."

13 "The bankruptcy applies the principle and rules of
14 equity jurisprudence," *Pepper v. Litton*, 308 U.S. 295, 304
15 (1939), and its equitable powers are traditionally broad,
16 citing *United States v. Energy Resources Company, Inc.*, 495
17 U.S. 545, 549 (1990).

18 "Section 105 of the Bankruptcy Code codifies this
19 understanding of the bankruptcy court's powers by giving it
20 the authority to effect any 'necessary or appropriate order
21 to carry out the provisions of the Bankruptcy Code, and a
22 bankruptcy court is also able to exercise these broad
23 equitable powers within the plans of reorganizations
24 themselves.'

25 "Section 1123(b) (6) of the Bankruptcy Code permits

1 a court to 'include any other appropriate provision not
2 inconsistent with the applicable provisions of this title.'
3 In light of these provisions, we hold that this 'residual
4 authority' permits the bankruptcy court to release third-
5 parties from liability to participating creditors if the
6 release is 'appropriate' and is not inconsistent with any
7 provision of the Bankruptcy Code."

8 See also Class Five Nevada Claimants v. Dow
9 Corning Corp. (In re Dow Corning Corp.) 280 F.3d 648, 656 -
10 658.

11 I'll now turn to what types of claims can, in
12 fact, be released under that power, a topic that, again,
13 directs one back to the Second Circuit's Quigley case that I
14 repeatedly cited, 676 F.3d 45.

15 In that case, the court extensively discussed the
16 relation of its use of the term derivative claims to both
17 the court's jurisdiction to impose a mandatory release of
18 third-party claims and the court's power to do so, in
19 appropriate circumstances.

20 The use of the term derivative claim which really,
21 I believe began in the Manville III case, which appears at
22 517 F.3d 56, is an unfortunate one. There is a widely
23 accepted definition of the term, that is derivative claim,
24 it's a claim that is asserting injury to the corporate
25 entity and requesting relief that would go to the corporate

1 entity. See *Donahue v. Bulldog Investments, Gen. P'ship*,
2 696 F.3d 170, 176 (2nd Cir. 2012).

3 The Circuit has spent an enormous amount of time
4 and resources interpreting what I would refer to as true
5 derivative claims, i.e. those that are really claims
6 asserted by third-parties, but properly existing in the
7 bankrupt's estate, and belonging to the estate. Much of
8 this analysis occurred in the Madoff Case where various
9 third-parties tried to pursue for their own benefit as
10 opposed to for the benefit of the estate, claims against
11 third-parties and the court determined whether, in fact,
12 those claims were really claims of the third-party or claims
13 brought by the third-party, that would have to be, if there
14 was any recovery, part of the debtor's estate as opposed to
15 collected only by the third-party.

16 In these types of cases, the court looks at
17 whether the relief sought by the third-party claimant
18 against the third-party defendant, are really secondary
19 harms that flow primarily to the estate. See *Marshall v*
20 *Picard*, (In re Bernard L. Madoff Investment Securities LLC,
21 740 F.3d 81 (2nd Cir. 2014) and *Tronox Inc. v. Kerr McGee*
22 *Corp*, (In re Tronox Inc.) 855 F.3d 84 (2nd Cir. 2016). They
23 defend the right -- the strong bankruptcy policy to a
24 weighable recovery from the debtor's estate, which is a
25 concomitant requires that claims that purport to be

1 independent of the remedy for the debtor's estate, but are,
2 in fact, arising from harm to the debtor, be for the
3 debtor's benefit, and not the third-party's benefit.

4 This is the type of claim that is included within
5 the non-opioid release for non-Sackler shareholder parties.
6 That release, as defined in the non-opioid excluded claim
7 definition, does not include, instead it excludes any cause
8 of action that does not alleged, expressly or impliedly any
9 liability that is derivative of any liability of any debtor
10 or any other estates.

11 If, in fact, those types of claims were the only
12 claims to be released, we would not be talking about a
13 third-party claim release. We would be talking about a
14 release that clarifies and protects the estate from backdoor
15 attacks, through the assertion of purportedly third-party
16 claims, that, in fact, are estate claims.

17 Instead, third-party releases, quite often,
18 involve independent claims, at least independent as a legal
19 basis, if not as a factual basis. See, for example *In re*
20 *Drexel Burnham Lambert Group*, 960 F.2d 285 (1992). The
21 claim asserted by the California Department of Toxic
22 Substances Control against third-parties in California
23 Department of Toxic Substances Control v. Exide Holdings,
24 Inc. (*In re Exide Holdings, Inc.*) 2021 U.S. District LEXIS
25 138478 (D. Del. July 26, 2021) and in *Cartalemi v. Karta*

1 Corp. (In Re Karta Corp) 342 B.R. 45 (S.D.N.Y. 2006) .

2 The question is what sorts of independent legal
3 claims are properly covered by a third-party injunction. On
4 this point, as in so many others, the Circuits' opinion in
5 the Quigley case, albeit in that it discusses liability
6 under Section 524(g) , provides real guidance.

7 In that case, the party relying upon a third-party
8 release, an insurance company, argued that because the claim
9 against it would not have arisen but for the debtor because
10 the debtor distributed its products, it would be covered
11 properly by the release. That third-party claimant said
12 otherwise and in this instance, as opposed to in the
13 jurisdictional argument, the Circuit agreed with the
14 claimant.

15 The court concluded that the but/for test creates
16 too much of an accidental nexus to the bankruptcy estate and
17 that instead the third-party claim to be subject to the
18 injunction must arise as a legal consequence of the debtors'
19 conduct or the claims asserted against it such that that
20 conduct must be a legal cause or a legally relevant factor
21 to the third-party's alleged liability, 676 F.3d 45, 59-60.

22 This is a consistent theme throughout the case
23 law, independent liability may be enjoined if it is
24 dependent on the debtor's liability through conduct of the
25 debtor. See Continental Casualty Company v. Carr, (In re WR

1 Grace and Company), 900 F.3d 126, 136.

2 As stated in the Kardi Corp. case, which I've
3 previously cited, if there is an identity of interest in
4 between the debtors and the non-debtor really sees with
5 regard to the related conduct, which would not exist as a
6 liability to the third-party, but for the debtor's conduct
7 is the proper subject of a third-party injunction.

8 Similarly, the court in In re FirstEnergy
9 Solutions Corp, 606 BR 720 (Bankr. N.D. Ohio), referred to
10 an identity of interest with the debtor, and between the
11 debtor and the third-party claimant, where the debtor is
12 primarily liable and one can view the non-debtor parties as
13 secondarily liable, is the relevant consideration.

14 So in construing the propriety of the Court's
15 exercise of its power to impose a non-consensual third-party
16 release, that type of relationship must underpin the
17 release, otherwise the release would be too broad. It would
18 release, for example, the claims based on a guarantee, which
19 is a separate factual premise than the debtor's conduct. It
20 would, for example, in this instance release a claim if one
21 of the Sackler's negligently prescribed an opioid to
22 someone, which clearly under the case law is guided by the
23 Quigley case, would not be the proper subject of a third-
24 party release.

25 So while I firmly believe that I have jurisdiction

1 and power under Article 1 and slash Article 3 of the
2 dichotomy of the Constitution, and there is a sufficient
3 source of that power in the Bankruptcy Code itself, in
4 Sections 105 and 1123(a)(6), as well as in the Court's
5 inherent equitable power, which has been recognized by
6 bankruptcy scholars in this area, including and applying to
7 third-party injunctions, claim injunctions and releases.
8 See, for example Adam J. Levitin's article "Toward A Federal
9 Common Law of Bankruptcy: Judicial Lawmaking in a Statutory
10 Regime", 80 Am. Bankr. L.J. 1 (2006).

11 I believe that they, to the extent that one is not
12 imposing a release of a truly derivative claim, the claim
13 needs to be sufficiently bound up in the debtor's own
14 actions, albeit that it's a separate independent legal claim
15 that would be payable, if recoverable, to the third-party,
16 as opposed to the debtor for the claim to be subject to the
17 injunction.

18 In that regard, regardless whether I, in applying
19 the standard, which I still have not yet gotten to, as to
20 whether the third-party claim release is appropriate or not,
21 would require that the shareholder releases in paragraph
22 10.7(b), by the releasing parties, be further qualified than
23 they now are. To apply where, again, following the guidance
24 of the Quigley case, a debtor's conduct or the claims
25 asserted against it or a legal cause or a legally relevant

1 factor to the cause of action against the shareholder
2 released party, otherwise the release would improperly
3 extend to, for example, the prescription example that I just
4 gave.

5 On the other hand, having read the objecting
6 states complaints against the Sacklers, which is noted not
7 only by me, but by former Chief District Judge McMann in her
8 Purdue opinion, essentially dovetailed with the objecting
9 states' claims against the debtors. Those claims, that is,
10 would be properly covered by the shareholder injunction.

11 As I said, that leaves still the issue of whether
12 under the applicable standards and the facts of this case,
13 the third-party releases should be imposed. Those standards
14 vary among the circuits. In the Second Circuit, in the In
15 Re Metromedia Fiber Network, Inc. case, 416 F.3d 136, (2d
16 Cir. 2005), the circuit went through a number of
17 circumstances where courts have exercised their power,
18 including under Section 105 of the Bankruptcy Code, in
19 furtherance of Section 1123(a)(6) and observed that courts
20 have approved non-debtor releases when the estate receives
21 substantial consideration, the enjoined claims would channel
22 to a settlement fund, rather than extinguished. The
23 enjoined claims would indirectly impact the debtors'
24 reorganization by way of indemnity or contribution and the
25 plan otherwise provided for the full payment of the enjoined

1 claims.

2 The court went on to state, however, that this is
3 not a matter of factors or prongs and further that no case
4 has tolerated non-debtor releases absent the finding of
5 circumstances that may be characterized as unique.
6 Recognizing further that such releases can be abused,
7 particularly if they are for insiders, and need to be
8 supported by sufficient findings by the Bankruptcy Court.

9 The Third Circuit has a similar, but somewhat
10 different, standard as laid out in the Exide case, where the
11 court, with the citations omitted, but citing among other
12 cases In re Continental Airlines, 203 F.3d 203 (3d Cir.
13 2000), "To grant non-consensual releases a court must assess
14 fairness, necessity to the reorganization and make specific
15 actual findings to support these conclusions. These
16 considerations might include whether 1) the non-consensual
17 release is necessary to the success of the reorganization;
18 the releasees have provided a critical financial
19 contribution to the debtor's plan; the releasees' financial
20 contribution is necessary to make the plan feasible and the
21 release is fair to the non-consenting creditors, i.e.
22 whether the non-consenting creditors received reasonable
23 compensation in exchange for the release."

24 Other circuits, including the Fourth and Eleventh
25 Circuits and the Sixth Circuit have applied a multifactor

1 test as well that is in some ways similar; 1) There is an
2 identity of interests between the debtor and the third-
3 party, usually an indemnity relationship, such that a suit
4 against the non-debtor is, in essence, a suit against the
5 debtor or will deplete assets of the debtor's estate;

6 The non-debtor has contributed substantial assets
7 to the reorganization;

8 The injunction is essential to reorganization -
9 namely, the reorganization hinges on the debtor being free
10 from indirect suits against parties who would have indemnity
11 or contribution claims against the debtor;

12 The affected class or classes have voted
13 overwhelmingly to accept the plan;

14 The plan provides a mechanism to pay for all, or
15 substantially all, of the claims in the class or classes
16 affected by the injunction;

17 The plan provides an opportunity for those
18 claimants who choose not to settle to recover in full; and

19 The bankruptcy court made a record of specific
20 factual findings that support its conclusions.

21 The Seventh Circuit has a very broad standard,
22 although noting the -- the potential for abuse, whether it
23 needs to be a finding that the release was an essential
24 component of the plan, the fruit of long-term negotiations,
25 and achieved by the exchange of good and valuable

1 consideration that will enable unsecured creditors to
2 realize distribution in the case. In re Ingersoll, Inc.,
3 562 F.3d 856 (7th Cir. 2009). Again, according to the
4 Second Circuit, none of these factors is dispositive, but
5 they do need to be considered in relation to the record, and
6 they do need to be in the context of truly unique
7 circumstances, where the release is necessary to the plan.

8 And certainly, the circumstances of this case are
9 unique. Every Chapter 11 case has its own unique factors
10 and difficulties, but I believe this case is the most
11 complex case given the issues before the parties and
12 ultimately the Court that I have ever seen and that has come
13 before the courts under Chapter 11. At least, that view is
14 confirmed by the parties to this case who were represented
15 by extremely capable and experienced counsel.

16 It is also clear to me that, for the reasons I've
17 already stated, the monetary contributions by the Sacklers
18 are absolutely critical to the confirmation of this Chapter
19 11 plan. Without them, I believe the plan would completely
20 unravel, including the complex interrelated settlements that
21 depend upon the amount of consideration being supplied, as
22 well as the non-monetary consideration.

23 There's also the case that the plan has been
24 overwhelmingly accepted, including by the classes affected
25 by the third-party release, well above the 75 percent

1 supermajority in Section 524(g), and recognizing the proper
2 classification scheme of the plan, over 95 percent of the
3 creditors in classes where there are objections.

4 It is also clear to me that the amount being paid
5 by the Sackler released parties or the shareholder released
6 parties is, in fact, substantial. As I noted earlier, not
7 only is it substantial in dollar terms, I believe it's the
8 largest amount that shareholders have paid in such a context
9 ever.

10 It has been argued that either in light of the
11 aggregate amount of the claims or the amount of the
12 Sacklers' wealth is not substantial. And I've considered
13 that point carefully. As I noted, I would wish the amount
14 would be even higher, however as a raw matter, it is
15 undoubtedly a substantial amount. Moreover, and this
16 highlights the distinction from this case, from one of the
17 factors that I've cited, which is that the plan, "provides a
18 mechanism to pay for all or substantially all of the class
19 or classes affected by the injunction."

20 Clearly, that will not occur here as I've already
21 found the United States' claim, for example, is receiving
22 only under one percent of a recovery and it's fair to assume
23 that other claims that have yet to be liquidated would come
24 nowhere close to being paid in full.

25 On the other hand, there have been a number of

1 cases that have held that a full recovery is not necessary,
2 and indeed, one would question why you really need a third-
3 party release when you can project a full recovery anyway.
4 See In re Fansteel Foundry Corp., 2018 Bankr. LEXIS 3309,
5 (Bankr. S.D. Iowa Oct. 26, 2018) and Behrmann v. National
6 Heritage Foundation Inc. 663 F.3rd 704 (4th Cir. 2011).

7 A more relevant consideration, I believe, is
8 whether the plan in its third-party release provision is, in
9 fact, fair, not just to the estate generally and all of the
10 creditors in the estate, but also to those who are bearing
11 the brunt of the third-party release, which is the view
12 under the Third Circuit standard, and I believe a proper
13 one. The concept of marshalling from two different sources
14 of recovery, in some cases, including the Dow case that I've
15 frequently cited, has been cited as an authority for
16 imposing a third-party release. Marshaling does not require
17 a payment in full, generally. It only requires payment in
18 full from the sources of specific recovery, rather, the full
19 amount of the sources available from the marshaled claims.
20 And I have analyzed the fairness of the settlement on the
21 third-party claimants from the perspective of their recovery
22 if they were allowed to pursue their third-party claims.
23 And it's in that context, if at all, that the rights of the
24 third-parties in the amount that they would recover is
25 relevant to the question of whether there's a substantial

1 contribution to the reorganization.

2 It is, without doubt, the case that without these
3 releases the Sackler shareholder released parties would not
4 agree to the payments under the plan, and they,
5 understandably I believe, are insisting on that because that
6 is their consideration in return for the consideration they
7 are providing to the estate. I've already concluded that
8 without the releases the plan would unravel and in all
9 likelihood, the Debtors case would convert to a case under
10 Chapter 7 of the Bankruptcy Code.

11 In that context, I've already found that from the
12 Debtor's estate unsecured creditors like the objecting
13 creditors would in all likelihood recover nothing or at
14 most, as set forth in the unrefuted liquidation analysis by
15 Mr. Delaconte, no more than their pro rata share of \$600
16 million which is a high-case scenario that I am skeptical
17 about.

18 I've already gone through the dilutive effect
19 resulting from conversion of the case to Chapter 7. The
20 question is whether in that scenario the third-parties could
21 pursue the Sackler released parties to make up the amount
22 that they would have lost from the estate distribution by
23 pursuing their third-party claims.

24 In large measure, my analysis of that reasonably
25 projected outcome is quite similar to my analysis of the

1 collectability and merits of the estate claims against the
2 Sacklers. Although I believe that the fraudulent transfer
3 claims against certain of the Sacklers are possibly the
4 strongest of its suite of claims against them and they would
5 clearly be aggressively pursued by a Chapter 7 trustee. The
6 problem is that the senior claims of the United States and
7 the costs and risks of pursuing them would eat up most of
8 the value.

9 As far as the third-party claims are concerned,
10 they do derive from the same facts pertaining to the
11 Debtor's activities, operation, and marketing with respect
12 to opioids, but are further narrowed to claims against the
13 directors and controlling shareholders related to those
14 activities. Again, we did not have a full trial regarding
15 the merits of such claims; however, the record before me
16 included the same types of arguments that I'm gone through
17 already with respect to the Sacklers' defenses to the estate
18 claims, which would include veil-piercing and breach of
19 fiduciary duty and the like which all involve conduct by
20 controlling shareholders and directors, and I won't repeat
21 them here because I believe they equally apply to the third-
22 party claims.

23 In addition, the same issues pertaining to
24 collection apply, except that the well-recognized ability to
25 break through a spendthrift trust, if in fact -- this is

1 under U.S. law -- if, in fact, it was the recipient of a
2 fraudulent transfer would not apply to the third-party
3 claims which are not fraudulent transfer claims but rather
4 direct claims which would have to be asserted against the
5 Sacklers -- all of them -- and/or their companies which are
6 held in trust in the bankruptcy-proof trust structure
7 testified to by Mr. Cushing. I'm not, again, ruling that
8 that structure could not be breached, but I believe it would
9 be very difficult to do so, particularly where the
10 settlement which the trust and the trustees have agreed --
11 or prepared to agree to was undercut.

12 So it would appear to me that the aggregate
13 recovery by the objecting third-parties in respect of their
14 claims against the Debtor and against the third-parties --
15 which, again, I have narrowed to claims that fit within the
16 Quigley rubric -- would exceed materially their recovery if
17 I did not confirm the plan and they pursued their third-
18 party claims separately as well as their claims against the
19 Debtor in the inevitable liquidation of the Debtor under
20 Chapter 7.

21 A related argument made by the objectors is that,
22 contrary to what I've just gone through, the plan does not
23 satisfy the best interest test of Section 1129(a)(7) of the
24 Bankruptcy Code. There is a statutory response to that
25 argument that under the plain meaning of Section 1129(a)(7)

1 I believe is well taken.

2 That section, again, provides that with regard to
3 a party that has accepted its treatment under the plan, such
4 holder of the claim will receive or retain under the plan on
5 account of such claim -- and I want to emphasize that phrase
6 -- on account of such claim property of a value as of the
7 effective date of the plan that is not less than the amount
8 that such holder would so receive -- and I'm emphasizing the
9 words "so receive" -- or retain in the Debtor were
10 liquidated under Chapter 7 of this title. It is clear to me
11 that as a matter of grammar, the comparison is between the
12 amount that the objecting creditor would receive under the
13 plan on account of its claim and what it would so receive,
14 again, on account of its claim, under Chapter 7 and would
15 not look to rights that it would retain against third-
16 parties.

17 I recognize that the interpretation of Section
18 1129(a)(7) by two of my colleagues who I greatly respect in
19 In re Ditech Holding Corporation, 606 BR 544 (Bankr. SDNY
20 2019) and In re Quigley Company, 437 BR 102 (Bankr. SDNY
21 2010), are to the contrary, that one should look, if one can
22 make a reasoned determination, at the rights that one would
23 have, not in respect of one's claim, but in respect of other
24 third-party claims in a liquidation in comparison to the
25 rights that one would have based on one's claim under the

1 Chapter 11 plan. Neither of those cases, however, addresses
2 the plain meaning argument that I've just gone through, and
3 I believe the plain meaning would rule here.

4 Importantly though, I have not limited my ruling
5 to the plain meaning interpretation that I just gave. I
6 have instead assessed, based on the evidence before me in
7 this settlement hearing context, albeit what I believe would
8 be recovered by the objecting creditors in a Chapter 7 case,
9 both on account of their claims and on account of the third-
10 party claims. And based on that assessment, I have
11 concluded that they would recover more, or at least as much
12 as, that recovery if confirm with the plan.

13 In both of the Ditech and Quigley cases, the
14 courts stated that if the recovery from non-debtor sources,
15 i.e., the claims that would be released under the plan, were
16 neither speculative nor incapable of estimation or
17 speculative an hypothetical, then the analysis could be
18 done. In both of those cases, the courts determined -- in
19 one case, based on various admissions by the debtor, that is
20 the Quigley case -- as to the settlement history over a 20-
21 year period of such types of claims and at least some
22 evidence, which was the only evidence offered by the plan
23 proponent, which, again, has the burden of proof, which
24 showed that at least for a relatively short period --
25 January 1 through June 30, 2019 -- there were payments on

1 settlements that could be evaluated, and, therefore, one
2 could evaluate settlement payments generally, and,
3 therefore, the claims were capable of being estimated, the
4 plan proponents hadn't carried their burden of proof. The
5 objecting states have suggested that a similar failure of
6 proof exists here given the absence of any expert testimony
7 to try to value the claims of the objecting states against
8 third-parties, namely, the Sacklers and their related
9 entities.

10 It is true there is no such expert testimony, but
11 I believe it would have to be expert fact testimony, not an
12 assessment of the strengths and weaknesses of the claims,
13 including the cost of pursuing them, the risks of
14 collection, and the dilutive effect of all of the other
15 claims that would be pursued by all of the other creditors
16 in this case, including all of the other states who are
17 otherwise agreeing to the plan because it is perfectly
18 obvious that they would not agree to let the objecting
19 states alone pursue the shareholder released parties on the
20 theories that would equally apply under those states' laws.

21 Collectively, the states and territories in this
22 case filed proof of claims aggregating in an unliquidated
23 amount at least \$2.156 trillion. The objecting states share
24 of that adds up to \$482,947,000 or roughly 22.5 percent of
25 all of the filed claims by the states and territories. That

1 comes down to 450 billion or less than 21 percent if you
2 exclude West Virginia which was not raising this issue. If
3 you factor in all of the other claims, some of which would
4 clearly have third-party claim rights, you're talking about
5 a largely dilutive effect on the recovery on top of the
6 liability and claim collection issues that I've already
7 described.

8 I believe that given the paucity of any settlement
9 history here with the exception of the payment to the state
10 of Oklahoma by the Sacklers and their payment to the United
11 States in respect of their civil claims, that assessment,
12 which is fundamentally an assessment by the court of the
13 legal risks and implementation risks of pursuing a lawsuit
14 is a proper assessment, and I conclude again that the
15 settlement is fair to the objecting states after having
16 conducted that assessment. Their claims in large measure
17 would depend upon, to the extent they are independent of the
18 Debtors truly -- and, therefore, not truly derivative claims
19 -- would depend largely on finding whether any of the
20 Sacklers was personally responsible for the misconduct of
21 Purdue. Such a trial might actually show that. I believe
22 the testimony before me was inconclusive on that point,
23 although, clearly, I accept that there is substantial risks
24 for the Sacklers, that point would be won by the objecting
25 states. So in addition to that risk for the reason I've

1 already stated, there are substantial cost and collection
2 risks that I don't need to go through again.

3 As far as the gravamen or the proof that would
4 need to be shown, I've not gone through every state's
5 applicable law on this point, but I will note that the main
6 case that they have cited in their briefs -- Grayson v.
7 Nordic Construction, Inc., 92 Wn.2d 548 (1979) and State v.
8 Ralph Williams, North West Chrysler Plymouth, Inc., 87 Wn.2d
9 298, 322 (1976) -- both of which found individual liability
10 based upon the controlling shareholders personal actions for
11 many of the unlawful acts and practices taken by that
12 person's corporation.

13 The last argument made by the objecting states is
14 that the nonconsensual third-party release and injunction is
15 a violation of their sovereignty and police power. There is
16 no such bar in the Bankruptcy Code itself.

17 The Bankruptcy Code and the judicial code, in
18 certain carefully prescribed instances, recognize the police
19 power of states and other governmental entities but only in
20 limited contexts. Thus, in Section 362(b)(2), Congress
21 provided an exception to the automatic stay for the
22 liquidation of a claim in the exercise of police power but
23 stayed its payment, and such claims are, in fact, as is well
24 recognized, not exempt from Chapter 11 debtor's discharge.

25 Similarly, 28 U.S.C. Section 1452 precludes the

1 removal to the bankruptcy court, which is generally
2 permitted under that section, of a pending cause of action
3 if it is one that is asserting the police power. The scope
4 of the police power in those exceptions has not been decided
5 definitively by the second circuit. As noted in a thorough
6 discussion in *In re General Motors, LLC, Ignition Switch*
7 *Litigation*, 69 F.Supp.3d 404 (SDNY 2014), the exception --
8 the definition of police power, for purposes of these
9 exceptions, has evolved over the years from a focus on
10 distinguishing between actions to enforce the police with
11 respect to conduct on the one hand and actions to provide
12 for financial recovery on another.

13 After Board of Governors of the Federal Reserve
14 systems, the *MCorp. Financial, Inc.*, 502 U.S. 32, 40 (1991),
15 the focus has turned more from the subjective merits of the
16 government entities exercise of its police power in a given
17 case only to the purpose of the law that the governmental
18 unit is attempting to enforce, even if that purpose, as is
19 well recognized, may include the payment of money. I accept
20 that broader definition of the police power. The fact that
21 a governmental entity is looking to collect money, I believe
22 is not enough to take it out of the police power exception.

23 But, again, that exception is a limited one in the
24 Bankruptcy Code and the judicial code. It is well
25 recognized, indeed the 10th Circuit states that it is a

1 matter of Hornbook law that actions excepted from the
2 automatic stay, including under the police power, may be
3 subject to specific injunctive relief under Section 105(a),
4 In re Western Real Estate Fund, 922 F.2d 592, 599 (10th
5 Cir.) as I previously cited and In re Commonwealth
6 Companies, Inc., United States v. Commonwealth Companies,
7 Inc., 913 F.2d 518 (8th Cir. 1990). See also 3 Collier on
8 Bankruptcy P 362.05 and, as that discussion notes, the
9 legislative history to the section which recognizes the
10 power to enjoin, notwithstanding that the injunction is of
11 the police power, 143 Cong.Rec. H109 50-03, 1997 WL 712488
12 H109 50, (November 12, 1997) and H.Rept 95-595 95th Congress
13 1st Session (September 8, 1977), "Subsection B lists five
14 exceptions to the automatic stay. The effect of an
15 exception is not to make the action immune from injunction."

16 As far as the limitation on the power to assert
17 the police power, as least as far as a general assertion of
18 states' rights over the power of the Bankruptcy Code, see In
19 re Peabody Energy Corp., 958 F.3d 717 (8th Cir. 2020). And
20 in fact, plan injunctions, at least in one instance and a
21 recent one, have been imposed without any qualms about the
22 police power authority. See California Department of Toxic
23 Substances Control v Exide Holdings, Inc., 2021 U.S. Dist.
24 LEXIS 138478 (D. Del. July 26, 2021).

25 At this point, given the states' agreement,

1 including the objecting states' agreement, to the public
2 private allocation and the NOAT allocation under the plan
3 and the carve outs from the plan release, the only thing of
4 tangible note that the states would be obtaining here would
5 be money which they've actually agreed to put to use under
6 the plan for abatement purposes and which they're not
7 disputing the validity of -- in fact, the remarkable
8 reconstructive nature of such provisions.

9 The objecting states nevertheless state that the
10 plan deprives them of establishing a sufficient civil
11 punishment for the released claims, and certainly, that is a
12 valid aspect of the police power, namely, the sending of a
13 message to others who might similarly, if it is proven
14 against them, be shown to have improperly engaged in conduct
15 that would subject them to the liability that the states
16 assert they would have the ability to impose here and that
17 is being released.

18 It is clear to me, however, that the states cannot
19 have it both ways. They cannot have the results of the plan
20 and have further punishment than the plan already provides.
21 They are not (indiscernible) to make that choice, unlike 80
22 percent of their state brethren and sisters, but the
23 consequences of such additional punishment would be to the
24 detriment of all of the states and the creditors in this
25 case.

1 The element of punishment, besides the loss of all
2 of Purdue and the money the Sacklers are paying, also
3 includes, I believe, the agreement by the Sacklers and the
4 Debtors to provide the comprehensive document depository
5 which includes waivers by the Debtors of attorney-client
6 privilege for future analysis by the States and third-
7 parties.

8 Ms. Conroy, who has been pursuing Purdue and the
9 Sacklers longer than anyone and harder than anyone, I
10 believe, has noted that that feature of the settlement is
11 perhaps the most important one -- even more important than
12 the billions of dollars being paid by Sackler family
13 members.

14 It is especially important in the public context
15 raised by the objecting states. It will provide far more
16 transparency to the conduct of Purdue and those it did
17 business with and those who regulated it, including some of
18 these very objectors, including the state where Purdue's
19 main offices are, Connecticut, and the federal government,
20 which of course also regulated Purdue.

21 That record is extremely important, not only for
22 continuing to pursue lawsuits against other parties, but
23 also to guide legislatures and regulators as to how better
24 to address a company that has a legal product that is also
25 incredibly dangerous.

1 As I've noted the other aspects of the plan that
2 deal with NewCo, also provide a model for either further
3 self-regulation or regulation by regulatory bodies.

4 Each of the four members of the Sackler family who
5 testified during the evidentiary hearing before me was asked
6 would they apologize for their role and conduct related to
7 Purdue. Their reactions, as perhaps is typical of a family,
8 varied. None would state an explicit apology, which I
9 suppose is understandable given the legal risks they face in
10 making such an apology before a settlement, whether there's
11 an objection to the settlement, although I will note that in
12 a somewhat similar context, I have received an apology to
13 victims of misconduct.

14 One of the witnesses, frankly, did not accept any
15 level of responsibility. The other three with differing
16 degrees of emotion did in terms of stating their regret for
17 what their company had done. A forced apology is not really
18 an apology. So we will have to live without one.

19 The writer Standahl wrote that most people do not
20 forgive, they just forget. Given the nature of this
21 settlement, including the document depository, forgetting
22 will be impossible. To me, those elements of the settlement
23 more than justify the admittedly serious implications, even
24 in a context where the real relief now being sought by the
25 states has been agreed by them in overriding their assertion

1 of their own independent police power rights.

2 So assuming that the change to Section 10.07(b) of
3 the plan will be made, and I will not confirm the plan if it
4 isn't made that I outlined, and assuming one other change
5 that I believe is necessary, I will confirm the plan. I do
6 so agreeing with the Creditors Committee and everyone else
7 on the other side of the table, including the Debtors from
8 the Sackler family, that I wish the plan had provided for
9 more, but I will not jeopardize what the plan does provide
10 for by denying the confirmation.

11 The other change to the plan that I believe is
12 required is to the provision found at Paragraph 11.1(e) of
13 the plan on Page 146, which directs people who prosecute a
14 cause of action for a nonopioid-excluded claim, which is
15 truly a derivative claim in the normal definition of the
16 term, unless such person first obtains leave from the
17 bankruptcy court.

18 Consistent with my remarks to counsel for the
19 Canadian Municipalities, that provision should be made clear
20 that it provides only to causes of action that colorably is
21 a non-opioid-excluded claim, i.e. if the cause of action is,
22 for example, for a fraudulent transfer claim brought by
23 Purdue Canada or some other claim, it should not have to go
24 through the bankruptcy court.

25 So I will confirm the plan only if the following

1 phrase is added after the phrase "non-opioid-excluded claim"
2 in the third line of 11.1(e) "if such cause of action
3 colorably is a non-opioid-excluded claim." That is
4 different than the stricken language which said the claim
5 must be colorable. This is one that is colorably an
6 excluded claim.

7 So as I noted at the beginning of this hearing, I
8 have an over one-hundred-page confirmation order I have not
9 reviewed in detail. I've given you a several hours' long
10 ruling, for which I apologize for the length of. I will go
11 through the confirmation order carefully, but I will confirm
12 the plan if it is modified in the two ways that I've noted
13 during my ruling.

14 MR. HUEBNER: Your Honor, thank you very much with
15 tremendous apologies for even needing to speak at all after
16 a six-and-a-half-hour bench ruling without a break. There
17 are two housekeeping matters with respect to statutes of
18 limitations and the injunction, which I will ask Mr.
19 Kamenetzky to in a minute. Those will hopefully only take
20 45 seconds. I have one thing before that, Your Honor, that
21 I also raise with some hesitation.

22 During the course of the six and a half hours,
23 Your Honor, I believe, we might have misheard, but we might
24 have heard you say that the majority of the Sacklers' assets
25 are in trusts organized under the bailiwick of Jersey. For

1 the record, Your Honor, we think you may have intended to
2 refer to the Mortimer A side of the family.

3 According to the testimony, including his report
4 at JX3092 at Docket 3488, the A side of the family has
5 substantial assets in trust under bailiwick of Jersey. The
6 documents also reflect that the B side, which is the Raymond
7 side, which is largely the domestic side, does not have
8 equally significant assets outside the United States. They
9 do have put in record evidence --

10 THE COURT: They do have them in spendthrift
11 trust.

12 MR. HUEBNER: Exactly, Your Honor. We were quite
13 confident that you didn't mean to rely on the majority of
14 their overall assets being in Jersey trusts, but rather in
15 various trusts. The A side has a lot of money in Jersey.
16 The B side does not, which is what the evidence shows. And
17 we just wanted to make sure that, as you said, the record
18 accurately reflected what you found in that respect.

19 THE COURT: As I said in the beginning of my
20 ruling, I will go through it and correct any misstatements
21 that I made to that effect, although the ruling won't
22 change.

23 MR. HUEBNER: Perfect, Your Honor.

24 THE COURT: The B side has most of its assets in
25 spendthrift trusts.

1 MR. HUEBNER: Thank you, Your Honor. I think we
2 all know what the facts are. They are uncontroverted. That
3 was the only point. Let me now put myself back on mute and
4 ask Mr. Kaminetzky to handle two quick housekeeping matters.
5 And I believe there is nothing further, certainly, from the
6 Debtors.

7 THE COURT: Okay.

8 MR. KAMINETZKY: Your Honor, Benjamin Kaminetzky
9 of Davis Polk. For the Debtors, again, with apologizes.
10 You must be exhausted. Two, I hope, administrative matters.
11 The first back to the preliminary injunction.

12 Following the entry of the Court's bridge
13 extension on Monday, which is Docket No. 286 in the
14 Adversary proceeding No. 19-08289, the preliminary
15 injunction is now set to expire today.

16 As I mentioned on Friday, there is a provision in
17 the proposed confirmation order that will extend the
18 preliminary injection through the effective date, that is
19 Paragraph 56(a) of the proposed confirmation order.
20 Bankruptcy Rule 3020(e) in Paragraph 66 of the order provide
21 that the confirmation order be stayed until the expiration
22 of 14 days after the entry of the order unless the Court
23 orders otherwise.

24 There will therefore be a small gap in the
25 protection afforded by the preliminary injunction and the

1 voluntary injunction unless the Court enters a second bridge
2 order.

3 So as I foreshadowed last Friday, the Debtors
4 respectfully request that the Court enter another bridge
5 order extending the preliminary injunction to entry of the
6 confirmation order and the expiration of the 14-day period,
7 stay period we just described. So I guess I could go on,
8 but we've spoken to the UCC, the AHC and MSGE and they
9 support this. And given my colloquy with the Court on
10 Friday about the Debtor's intention to seek the second
11 bridge order today, I assume the nonconsenting states are in
12 a position to affirm their voluntary compliance with the
13 extension rather than to be formally bound by it, which is
14 consistent with past practices.

15 So if the representatives of nonconsenting states
16 are on, and could indicate that on the record, that would be
17 wonderful. I see Mr. Gold.

18 MR. GOLD: Your Honor, Matthew Gold from Kleinberg
19 Kaplan representing Washington, Oregon, and District of
20 Columbia, although maybe I should let Mr. Troop go first,
21 but can Your Honor hear me?

22 THE COURT: Yes, I can, thanks.

23 MR. GOLD: I would defer to Mr. Troop who speaks
24 on behalf of more states, if he wishes to go first.
25 Otherwise, I'm prepared to speak.

1 MR. TROOP: Your Honor, Andrew Troop on behalf of
2 the nonconsenting states. I have not received any
3 information or suggestion that the members of the
4 nonconsenting states will not continue to abide voluntarily
5 with the preliminary injunction or its extension. We did
6 not solicit on that point. Specifically, I will defer to
7 any law on phone if they think otherwise, but I don't think
8 there should be an issue, Your Honor.

9 THE COURT: Okay.

10 MR. GOLD: Thank you, Your Honor. This is Matthew
11 Gold again. As Mr. Troop said, we certainly have not had
12 any opportunity to discuss with our clients this particular
13 request. I think it would have been far preferable if the
14 Debtors, in soliciting the opinions of all those other
15 parties, had spoken to us first rather than making us
16 request in open court during the hearing, but it is
17 obviously too late for that.

18 The one question that I do not understand from the
19 way Mr. Kaminetzky put it, is that we have been given to
20 understand that that the effective date under the plan
21 occurs not 14 days after the entry of the confirmation
22 order, but at least 82 days after the entry of the
23 confirmation order.

24 So what Mr. Kaminetzky is requesting here is not a
25 two-week extension of the injunction, but a three-month

1 extension of the injunction. And I would at least
2 appreciate some clarification from Mr. Kaminetzky on that
3 point so that we can understand what is considered brief or
4 not in this context.

5 THE COURT: Fair point. I think it wouldn't be
6 limited by time, right? It's limited by definition?

7 MR. KAMINETZKY: I'm sorry. The confirmation
8 order extends the, the proposed confirmation order extends
9 the preliminary injunction to the effective date. The
10 effective date is still the effective date of the plan.
11 Those are two different things.

12 THE COURT: Right.

13 MR. KAMINETZKY: So the order would give us the
14 bridge to the effective date.

15 THE COURT: So this is time to get the order in
16 and to have it be an effective order.

17 MR. KAMINETZKY: Yes.

18 THE COURT: So I think it is 14 days unless
19 there's a stay pending appeal.

20 MR. KAMINETZKY: That's correct. And Your Honor,
21 just on the point -- I said this was going to happen last
22 Friday. This is not a surprise at all.

23 THE COURT: It wasn't a surprise to me. Look, I
24 am perfectly happy to have the states continue to agree as
25 opposed to having it imposed on them. There's precedential

1 value to that that I understand. But if they weren't to
2 agree, in all likelihood, I would extend the injunction
3 through the entry of the confirmation order and the order
4 being a final order.

5 MR. KAMINETZKY: Thank you, Your Honor. The
6 second issue, as Your Honor knows, the shareholders
7 settlement agreement contains a unique enforcement mechanism
8 which we call the snapback in the event that certain
9 breaches of the shareholder settlement agreement occur, the
10 MDT can trigger a snapback by filing a notice with the
11 Court, at which point, both the shareholder releases and the
12 shareholder injunction will unwind with respect to any
13 breaches by the shareholder parties and the MDT, and the
14 releasing parties could then sue the breaching shareholder
15 parties under the release causes of action.

16 To ensure that these remedies are maximally
17 effective, it is necessary to preserve those claims during
18 the life of the settlement agreement or until the parties
19 subject to the snapback have fully performed their
20 obligations. According to Section 10.9 of the plan and
21 Paragraph 32(a) of the confirmation order, they toll any
22 statute of limitations that apply to the shareholder release
23 claims.

24 However, we are faced with a potential very small
25 gap because those provisions of the plan and confirmation

1 order will not take effect until the 14-day stay of the
2 confirmation order expires. And we're facing the end of the
3 tolling provisions in Section 108(a)(2) and the limitations
4 in 546(a)(1)(A) because we're approaching the second
5 anniversary of our filing.

6 So we have a proposed order which is to make sure
7 that the tolling provisions provided by Section 10.9 of the
8 plan is in place as soon as possible and before the 14-day
9 stay runs.

10 So the proposed order does effectuate only that
11 tolling provision to the plan and confirmation order. It
12 will start now. It tolls the applicable statute of
13 limitations for the shareholder release claims in exactly
14 the same way as it's provided by the plan in Paragraph 32(a)
15 of the confirmation order. The tolling order is to remain
16 effective until the later of the date of the confirmation
17 order becomes final and if the confirmation order is vacated
18 or reversed, 225 days after the date when that occurs so
19 folks have plenty of time to file their complaints.

20 This is not controversial --

21 THE COURT: Is this -- sorry to interrupt you, Mr.
22 Kaminetzky. Is this a stipulated order with the Sacklers?
23 So they're agreeing to this?

24 MR. KAMINETZKY: Yeah. Both sides, A and B, agree
25 to this and I can't imagine anyone would object --

1 THE COURT: Okay.

2 MR. KAMINETZKY: -- given that this is just a way
3 to maximally preserve the claims if, God forbid, there's a
4 breach. We can provide that to Your Honor.

5 THE COURT: You can submit that to chambers.

6 MR. KAMINETZKY: Okay. Perfect.

7 THE COURT: When does that period expire? I mean
8 I don't think it expires tonight, right?

9 MR. KAMINETZKY: No. We have --

10 THE COURT: It will get entered tomorrow then.

11 MR. KAMINETZKY: Yeah. We have September 15th or
12 16th depending on how you count. So we'll get that on file.

13 THE COURT: Okay. So you can submit that to
14 chambers and it will get entered tomorrow. I expect the
15 confirmation order probably will get entered tomorrow. I do
16 have a brief calendar in the morning, but I'll be able to go
17 through it.

18 MR. KAMINETZKY: Okay. Thank you, Your Honor.

19 MR. HIGGINS: Your Honor, very briefly, Ben
20 Higgins for the United States Trustee. May I be heard
21 briefly, Your Honor?

22 THE COURT: Sure.

23 MR. HIGGINS: Thank you, Your Honor. Just on a
24 procedural note now that Your Honor has ruled. The United
25 States Trustee intends to file a formal motion for a stay

1 pending appeal. As part of that motion, we would be seeking
2 an expedited hearing.

3 Consistent with the case management order, Your
4 Honor, we have conferred with Debtors' counsel. We have not
5 yet reached an agreement on an expedited briefing or hearing
6 schedule, but as the case management order directs, Your
7 Honor, we'll reach out to counsel again tonight and if we're
8 unable to reach an agreement regarding scheduling, we know
9 to contact chambers as the case management order requires.

10 THE COURT: Okay. That's fine.

11 MR. HUEBNER: Your Honor, just so everybody is
12 clear, so we don't get a cascade of emergency pleadings like
13 this, I think Mr. Gold correctly referred to before, it is
14 of record in this case and should be well known to everybody
15 and if it's not, they should be come familiar with it, but
16 our DOJ settlement approved by this Court after a multi-hour
17 hearing as well, expressly contemplates a settlement -- a
18 sentencing hearing not earlier than 75 days after the entry
19 of the confirmation order. And emergence not earlier than
20 eight days -- then seven days after that, which is why, as
21 Your Honor has actually advised all parties at multiple
22 recent hearings, including the KERP hearing, this company
23 can't come out for several months and I think at this point,
24 you know, to start burdening the docket with emergency
25 motions, there's got to be a way to work this out more

1 thoughtfully than unnecessary emergency motions when there
2 cannot be an emergence for really rather quite a while.

3 We don't want anybody to be prejudiced, we
4 understand that. That's the kind of thing we're trying to
5 be in dialog about, but we have a history here where we're
6 in dialog with people and we're waiting for a thoughtful
7 response and then they just never call back or email and
8 file something that costs the Estate a lot of resources as
9 multiple parties all have to think about it and respond to
10 it.

11 So what I said on the very first day of this case,
12 at the very first hearing, still holds two years later.
13 Please just call us and let's see if we can work something
14 out that is efficient and not a waste of taxpayer resources
15 and Estate resources that does nothing but drain money from
16 abatement and saving lives.

17 THE COURT: Ms. Lee is very good in keeping my
18 calendar. She knows better than I do how long things will
19 take. Don't tell her that because she's probably valuable
20 to any number of law firms if they knew that. She'll find
21 time that makes sense. I don't think it is an emergency,
22 Mr. Higgins. I really don't, which is something you should
23 take into account before making such a motion.

24 MR. HIGGINS: Understood, Your Honor. That's why
25 we reached out Mr. Huebner twice about this and we will

1 continue to talk with him to work on a schedule that works
2 for everybody, Your Honor.

3 THE COURT: Among other things, I would hope that
4 someone would actually be able to read the last six hours of
5 what I was talking about before they actually decided to do
6 something.

7 MR. HIGGINS: Of course, Your Honor.

8 THE COURT: Okay. Anything else?

9 MR. KAMINETZKY: Nothing from the Debtor.

10 THE COURT: Thank you all. Thanks, everyone.

11

12 (Whereupon, these proceedings were concluded at
13 4:49 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 1, 2021

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